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NO. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

BORIPAT SIRIPAN

Petitioner

V.

UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the admission into evidence of ambiguous tape-recorded telephone conversations in the Thai language between people who had strong motives to distort the truth and who were not available to testify at the trial violated Petitioner's Sixth Amendment Right to confront and cross-examine his accusers.

2. Whether a determination that there was enough evidence of the existence of a conspiracy and of Petitioner's participation in it to allow the admission into evidence of tape-recorded conversations between third parties pursuant to F.R.E. 801(d)(2)(E) was also sufficient to establish the reliability necessary to satisfy the requirements of the Confrontation Clause, or whether a separate inquiry must be made as to reliability, especially where, as here, unusual circumstances exist.

3. Whether tape-recorded telephone conversations between third parties can be admitted into evidence against Petitioner under Rule 801(d)(2)(E) when: (a) one of the parties to the conversations was a government informant and there was no evidence that the other party was a coconspirator other than the conversations themselves; and (b) there was no independent evidence that Petitioner knowingly participated in the conspiracy.

4. Whether the decision below is contrary to prior decisions of this Court that knowledge is a necessary element of participation in a conspiracy.

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties herein, Sihadej Chindawongse and Alexander Steubing were co-defendants in the United States District Court for the District of Maryland. The trial of co-defendant Paul Primiano was severed. The appeal of Sihadej Chindawongse was consolidated with that of Petitioner in the United States Court of Appeals for the Fourth Circuit. Alexander Steubing did not appeal his conviction.

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OPINIONS BELOW

The decision of the Court of Appeals for the Fourth Circuit has not yet been officially reported. That decision is reproduced in full in the Appendix attached hereto under the caption United States v. Boripat Siripan, Cause No. 82-5266, dated August 28, 1985.

JURISDICTION

Petitioner seeks review of the decision of the United States Court of Appeals for the Fourth Circuit announced in its opinion on August 28, 1985 and entered on that date. No extension of time to petition for certiorari was sought in this Court. Jurisdiction is conferred upon this Court to review that judgment by writ of certiorari by 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioner's case involves 21 U.S.C. § 846, 21 U.S.C. § 841(a)(1), the Sixth Amendment to the Constitution of the United States, and Rules 801(d)(2)(E) and 802, Federal Rules of Evidence, which provisions read as follows:

21 U.S.C. §846 - Attempt and Conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

21 U.S.C. §841(a)(1)

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; . . .

Sixth Amendment to the United States - Rights of the accused

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; . . .

Rule 801(d)(2)(E)

(d) Statements Which Are Not Hearsay. A statement is not hearsay if–

(2) Admission by party-opponent. The statement is offered against a party and is (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 802

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.

STATEMENT OF THE CASE

Appellant Boripat Siripan (hereinafter "Siripan") was charged by way of superseding indictment on May 4, 1982 with a single count of conspiracy to distribute and possess with intent to distribute heroin in violation of 21 U.S.C. §846. Indicted as co-defendants were Sihadej Chindawongse, Alexander Steubing, Paul Primiano, George Barton, Viroj Chitmongkollert and Pirom Chongcharoen, who were also charged with distribution and possession of heroin in violation of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2. Barton, Chitmongkollert, and Chongcharoen were never arrested, and the trial of Primiano was separated.

Trial to a jury of the charges against Siripan, Chindawongse, and Steubing commenced on July 28, 1982, and verdicts of guilty as to all counts were returned on August 3, 1982. Siripan was sentenced on September 14, 1982 to a term of imprisonment for fifteen years and fined $15,000.00.

After numerous delays caused by inability to obtain a transcript and changes in counsel, an appeal was docketed in the Fourth Circuit Court of Appeals, which rendered its decision affirming Siripan's conviction on August 28, 1985.

The indictment arose from a scheme whereby heroin was sent from Thailand to Chicago in diplomatic pouches, where it was retrieved by Chindawongse, a Thai Vice-Consul. Chindawongse would deliver the heroin to Boonyarit Voravithaya, who arranged sale of the heroin. Voravithaya was arrested with a substantial quantity of heroin in Baltimore, Maryland with Steubing. Voravithaya at that point agreed to become an informant for the Department of Justice, Drug Enforcement Administration.

After he became an informant, the DEA tape-recorded a number of telephone calls between Voravithaya and various other people. Of the ones admitted into evidence three were in English; two to Primiano and one to a number in California at the residence from which Siripan was exiting at the time of his arrest. All the rest were in Thai. Seven were to a person in Thailand referred to as "Ang," five were to Chindawongse in Chicago, and one was to Siripan at the Sheraton Squire Hotel in New York City.

In his conversations with Ang, Voravithaya discussed the mechanics of the heroin transactions. Although the conversations were in code, taken in the context of the receipt of heroin from Chindawongse, it was clear that this was the topic under discussion.

In addition to the details of picking up the heroin, arrangements had to be made to send the money made from the sale of the heroin back to Thailand. Voravithaya had originally intended to deliver it himself, but his arrest made this impossible. He gave Ang various reasons for being unable to return himself, and asked that someone be sent over to pick up the money.

During telephone conversations between Voravithaya and Ang on April 13 and 15, Ang said that a friend of his would meet Voravithaya in New York and pick up "60,000" for him, and they discussed the mechanics of the two meeting in the city. Voravithaya also expressed anxiety about the person being followed, but Ang assured him that the friend was "clean." Although he was not mentioned by name in those conversations, the "friend" apparently was Siripan.

Voravithaya and Siripan met at the Sheraton Squire Hotel in New York on April 16, 1982, under DEA surveillance. The

Agents saw Voravithaya (then an informant) make a telephone call, then sit in the lobby. Several minutes later Siripan appeared and met him. The two of them sat in the bar for a few minutes, then got on the elevator alone. A DEA agent testified that he watched the elevator lights go to the ninth floor without stopping. The elevator then continued above the ninth floor, but the agent was unable to say where it stopped after that, whether the occupants got off at the ninth floor, or whether anyone else got on there. Siripan was registered in room 902.

When Voravithaya returned to Baltimore with the DEA agents, he did not have the $60,000 with him that he had taken to New York. There was no direct evidence of what he had done with the money.

Voravithaya died before the trial and Ang was not available to testify as he remained in Thailand.

At the time of his arrest in this matter, Voravithaya was on parole for a heroin conviction in California. In that case, Voravithaya provided information on some of the same people alleged to be participants in this conspiracy and had been placed in the witness protection program. Following his arrest in this matter, he was very concerned about his wife's (or fiance's) safety since she was still in Thailand, and had suggested to the DEA that she should be the one to act as money courier as a way of getting her out of Thailand. The jury was never informed of Voravithaya's first arrest and informant activities, of his participation in the witness protection program, of his original intention to take the money back to Thailand, or of his concern for his wife's safety.

Siripan was arrested on May 2, 1982 as he left a home in California owned by Herb Steinberg. The arresting agent took a diary and address book, a slip of paper, round trip airline tickets between Thailand and the United States, a passport, a California driver's license, and a resident alien card from Siripan. The diary and address books had telephone numbers for Ang in it. A translator testified that the Thai writing on the slip of paper said, "friend from Muangthong Housing Estate has gone to inquire about the stuff intrusted from Huahin." She also said that the word she translated as "stuff" could also mean "thing" or "article."

REASONS A WRIT OF CERTIORARI SHOULD BE GRANTED

I.

CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION OF THE COURT OF APPEALS CONCERNING ADMISSION OF THE TAPE-RECORDED CONVERSATIONS IS IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT CONCERNING THE RIGHT OF AN ACCUSED TO CONFRONT AND CROSS-EXAMINE WITNESSES AGAINST HIM

In approving the admission of the tape-recorded conversations between Voravithaya and various other individuals, the Fourth Circuit Court of Appeals violated both the letter and the spirit of prior decisions of this Court concerning an accused's right under the Sixth Amendment to confront and cross-examine his accusers.

Although he was never present at the trial, Voravithaya was in fact the government's star witness. It was only through his telephone conversations that the scheme to import heroin was given shape, and it was only through his conversations with Ang that Siripan's actions were given any explanation. Yet the jury never saw Voravithaya and was never exposed to any inquiry into his bias, into the scope of his knowledge of the conspiracy, or of Siripan's involvement therein. Nor could these deficiencies be cured by exposure to and inquiry of the other participant in the conversation, for Ang, too, remained a disembodied voice on a tape machine, a presence felt but never seen at the trial. The jury was not even given the opportunity to make judgments about the participants in the conversations based upon their inflections of speech, for the tapes themselves were in Thai, a language far removed from English. Thus they had to rely upon the translated and written word in evaluating this evidence.

Moreover, although the jury knew that Voravithaya became a government informant after he had been caught with a large quantity of heroin, it never learned that he had a prior conviction for the same kind of activities, that he was still on

parole and facing revocation, that he was under the witness protection program for that earlier work as an informant (including informing on the very same people who sent him to the United States this time), and that he was extremely concerned about his wife's safety. (Appendix, pp. 14-16, 23, 38-39, 54, 56, 61) Because he was not present, the jury was not told that Voravithaya himself was supposed to deliver the $60,000 to Thailand until the arrest made that impossible, and that he suggested to the DEA that his wife be the one to carry the money. (Appendix, pp. 17, 52, 54-55, 59)

The right to confront one's accusers is fundamental to our system of justice. The truth is most likely to emerge through cross examination and face-to-face evaluation of the witness by the jury. The Confrontation Clause of the Sixth Amendment to the United States Constitution assures that a witness's recollection will be tested, his conscience sifted, his story explored, and his demeanor judged. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); California v. Green, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970); Barber v. Page, 390 U.S. 719, 88 S.Ct. 1318, 20 L.Ed. 2d 255 (1968). Statements of out-of-court declarants cannot satisfy the prohibition of the Confrontation Clause unless it is first shown that the declarant is unavailable and that the statement is marked with such indicia of trustworthiness that the integrity of the fact-finding process will remain intact. Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980). Dutton v. Evans, 400 U.S. 74, 91 S.Ct. 210, 27 L.Ed. 2d 213 (1970).

Here, Siripan concedes that the declarants were unavailable - Voravithaya through death, Ang because of his presence in Thailand, and Chindawongse because of his Fifth Amendment right against self-incrimination. The statements, however, are not sufficiently trustworthy to pass constitutional muster without the illuminating light of cross-examination.

At the time of the conversations, Voravithaya was a government informant, a heroin importer and dealer who had just been arrested with a pound of virtually pure heroin in his possession. He was on parole from a prior conviction for possession of heroin. It was in his best interests to bring as many people into the government's net as he could and to cast

as much blame as possible on others so as to curry favor with the authorities. Compare, e.g., United States v. Monaco, 735 F.2d 1173 (9th Cir. 1984). It was to his advantage to try to make Siripan appear to be a willing participant in an international scheme to bring heroin into the United States. He hoped to save himself and his wife.

Voravithaya was a man who was afforded the protections of the Witness Protection Program and thus given an opportunity to start over but who immediately resumed his old associations in Thailand and plunged anew into heroin trafficking. (Appendix, pp. 20-26)

Ang, for his part, had to deal with an obviously nervous agent who was thousands of miles away. Voravithaya feigned fear that Siripan would be followed (Ex. 14(c), App. pp. 75-76), then was quite upset at the prospect that he and Siripan would not be able to make connections once Siripan was in the United States. Ang was also clearly Voravithaya's superior, giving him directions as to what to do. It was only natural that Ang would try to soothe his underling by telling him that Siripan was a friend and was clean, and that he would reinforce his image of authority and control by using such terminology as saying he was "sending" Siripan to pick up money.

The only sense in which the tapes are "reliable" is that they are an accurate recordation of what was said. That does not mean that what was said was the truth or was the entire story. Because of the absence of either party to the conversations, Siripan was unable to ask, for example, why Voravithaya, who obviously was in the thick of the entire scheme, did not know who Siripan was, when Siripan was allegedly the trusted money courier. Similarly, why was Voravithaya worried about Siripan leaving New York without picking up the money if Siripan's job and purpose in being in the United States was to get money from Voravithaya for Ang? Why did Ang tell Voravithaya not to tell Siripan anything? Why is Siripan never mentioned in any conversations with Chindawongse, another principal character in the scheme?

The tapes present only part of the story, and Siripan was deprived of any opportunity to delve further into that story and develop it. The jury was deprived of any opportunity to

judge the demeanor and presence of these important witnesses, and did not even have the chance to judge nuances of speech, since the tapes were in Thai.

As was said by this Court in Dutton v. Evans, supra, 400 U.S. at 89, 91 S.Ct. at 220:

> "The decisions of this Court make it clear that the mission of the Confrontation Clause is to advance a practical concern for the accuracy of the truth-determining process in criminal trials by assuring that 'the trier of fact [has] a satisfactory basis for evaluating the truth of the prior statement.' California v. Green, 339 U.S., at 161, 90 S.Ct. at 1936."

That mission was greatly undermined here, where Siripan was convicted by the testimony of a government informant who never appeared at trial, and whose credibility could not be tested.

Not only could his credibility not be tested, but the conversations between Ang and Voavithaya which mentioned Siripan are themselves ambiguous. It is impossible to tell from them whether Siripan was aware that the money he was to pick up was derived from a drug transaction or whether he was in the United States for other reasons and incidentally agreed to pick up the money. There is no way to know what Voravithaya's testimony might have been concerning Siripan had he been present at trial. It might have been damaging, but on the other hand, it might have cleared him of any wrongdoing.

Allowing the introduction of these conversations into evidence subverted the truth-finding process; it was akin to the trial by affidavit against which the Confrontation Clause was designed to protect. It was contrary to the prior decisions of this Court which have held that an accused must be given the opportunity to confront and cross-examine his accusers. Certiorari should therefore be granted to correct this serious wrong.

II.

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT AMONG THE CIRCUITS CONCERNING THE RELATIONSHIP BETWEEN F.R.E. 801(d)(2)(E) AND THE CONFRONTATION CLAUSE

The Fourth Circuit Court of Appeals never independently addressed the Confrontation Clause issue. Rather, it held that, "[s]ince the tape recorded conversations implicating Siripan were properly admitted in evidence under Rule 801(d)(2)(E), their admission does not violate the confrontation clause." (Appendix p. 10).[1] By so deciding, the Fourth Circuit firmly adopted the rule followed by some Circuits that admissibility under Rule 801(d)(2)(E) satisfies the Confrontation Clause and rejected the rule followed in others that separate inquiries are necessary. This result is an erroneous reading of prior cases of this Court, and deprived Siripan of any scrutiny of the Confrontation Clause issues discussed in Part I, supra.

This recurring division among the Circuits is ripe for resolution (see Sanson v. United States, cert. den. ___U.S. ___, 104 S.Ct. 3559, 82 L.Ed.2d 861 (1984), Justice White dissenting), and this case is a particularly good vehicle for its resolution, since the unusual circumstances presented here draw the issue into sharp focus.

The Fifth and Seventh Circuits have clearly adopted the rule that Rule 801(d)(2)(E) admissibility alone assures reliability for Confrontation Clause purposes, United States v. Peacock, 654 F.2d 339 (5th Cir. 1981), cert. den. ___U.S. ___, 104 S.Ct. 404, 78 L.Ed.2d 344 (1983); United States v. Papia, 560 F.2d 827 (7th Cir. 1977), while the Sixth and Eleventh Circuits, have apparently adopted the same rule, but those Circuits also noted in their decisions that there were no unusual circumstances present. Boone v. Marshall, 760 F.2d

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[1] Siripan does not concede that the statements were admissible under Rule 801(d)(2)(E). In light of the Court's ruling, however, he will assume for purposes of this argument only that they were so admissible.

117 (6th Cir. 1985); United States v. Wolfe, 766 F.2d 1525 (11th Cir. 1985).

In 1972, the First Circuit also followed this rationale, but it has recently stated that Rule 801(d)(2)(E) and the Confrontation Clause are not coextensive. Ottomano v. United States, 468 F.2d 269 (1st Cir. 1972), cert. den. 409 U.S. 1128, 93 S.Ct. 948, 35 L.Ed.2d 260 (1973); United States v. Fahey, 769 F.2d 829 (1st Cir. 1985). The Second, Third, Eighth, Ninth, and Tenth Circuits all hold that Rule 801(d)(2)(E) does not itself insure compliance with the Confrontation Clause and that a separate inquiry must therefore be made to assure that constitutional requirements have been met. United States v. Wright, 588 F.2d 31 (2d Cir. 1978), cert. den. 440 U.S. 917, 99 S.Ct. 1236, 59 L.Ed.2d 467 (1979); United States v. Ammar, 714 F.2d 238 (3d Cir. 1983), cert. den. ___ U.S. ____, 104 S.Ct. 344, 78 L.Ed.2d 311 (1984); United States v. Massa, 740 F.2d 629 (8th Cir. 1984), cert. den. 53 U.S.L.W. 3824 (1985); United States v. Echeverry, 759 F.2d 1451 (9th Cir. 1985); United States v. Roberts, 583 F.2d 1173 (10th Cir. 1978), cert. den. 439 U.S. 1080, 99 S.Ct. 862, 59 L.Ed.2d 49 (1979).

Those Circuits which recognize a distinction between the purposes served by Rule 801(d)(2)(E) and by the Confrontation Clause have correctly analyzed the law; those which equate them are in error. The Fourth Circuit, like the Fifth and Seventh, bases its analysis upon the incorrect assumption that Rule 801(d)(2)(E) is an exception to the hearsay rule. (Appendix, p. 8). From that faulty premise, it reasons that no further inquiry is necessary because, "reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception." Ohio v. Roberts, supra, 448 U.S. at 66, 100 S.Ct. at 2539.

Coconspirator statements are not, however, regarded as hearsay, but rather are defined as party admissions by Rule 801(d)(2)(E). Rules 802 through 805 of the Federal Rules of Evidence are concerned with hearsay and its exceptions. Admission of evidence under an exception to the hearsay rule is premised upon a belief that it carries indicia of trustworthiness. Party admissions, on the other hand, are admitted not because they are trustworthy, but because a party cannot

challenge his own veracity. As was said by the Advisory Committee on the Proposed Rules, "[a]dmissions by a party-opponent are excluded from the category of hearsay on the theory that their admissibility in evidence is the result of the adversary system rather than satisfaction of the conditions of the hearsay rule . . . No guarantee of trustworthiness is required in the case of an admission." See, also, United States v. Ammar, supra, 714 F.2d at 255-56; United States v. Massa, supra, 740 F.2d at 638-39.

In analyzing the Confrontation Clause issue, the Fourth Circuit in this case considered only whether there was independent evidence of a conspiracy and Siripan's participation therein. (It did not consider whether there was independent evidence of participation in the conspiracy by the declarants, a matter addressed more fully in Part III, infra.) No consideration at all was given to the numerous factors which call the trustworthiness of the statements into question.

As discussed in Part I, supra, the conversations were in Thai, thus robbing the jury of the opportunity to evaluate nuances of speech in these cryptic conversations. The jury never learned of Voravithaya's prior conviction and informant activities, or of his concern for his wife's safety. It was impossible to delve into the extent of Voravithaya's knowledge of the scope of and participants in the conspiracy, or to fully explore his powerful incentive to lie or implicate as many people as possible in the conspiracy. The jury was never given an opportunity to physically observe the demeanor of either Voravithaya or Ang. None of these issues have any relevance to establishing a foundation for admissibility under Rule 801(d)(2)(E). They are, however, vital elements to be considered in evaluating the trustworthiness of the statements.

Courts of Appeals, drawing upon decisions of this Court, have suggested factors which are relevant to an inquiry into whether an accused has been afforded his rights under the Confrontation Clause i.e., (1) whether the context or the person to whom the statements were made suggest reliability; (2) whether the declarant had a motive to lie; (3) whether the declarant had personal knowledge of the identity and role of participants; (4) whether the jury had the opportunity to evaluate the credibility of the declarant; (5) whether the

statements are crucial to the prosecution or devastating to the accused; (6) whether the circumstances might provide reason to believe the declarant had misrepresented the accused's involvement; and (7) whether the statements are ambiguous. United States v. DeLuna, 763 F.2d 897 (8th Cir. 1985); United States v. Roberts, supra; United States v. Echeverry, supra.

Because of the Fourth Circuit's short cut around the Confrontation Clause via Rule 801(d)(2)(E), no factors such as these were considered. In the majority of cases, inquiry under Rule 801(d)(2)(E) would encompass all the concerns of the Confrontation Clause. But there are the few, such as the case at bar, where unusual circumstances combine to make a Rule 801(d)(2)(E) inquiry fall short of what is needed to protect an accused's right to confront and cross-examine his accusers. This Court has never tolerated favoring judicial convenience over the rights of an accused. The per se rule adopted by the Fourth Circuit may be easy, and may even be satisfactory in the majority of cases involving coconspirator statements, but it does not protect constitutional rights in those situations where a Rule 801(d)(2)(E) inquiry does not address all of the concerns of the Confrontation Clause.

For this reason, certiorari should be granted to resolve the conflict among the Circuits as to the proper review under Rule 801(d)(2)(E) and the Confrontation Clause, and to clarify that the two do not always share equal concerns.

III.

CERTIORARI SHOULD BE GRANTED BECAUSE THE LOWER COURTS DEPARTED FROM THE REQUIREMENTS OF RULE 801(d)(2)(E) WHEN THE TAPED CONVERSATIONS WERE ADMITTED INTO EVIDENCE

Of the sixteen telephone conversations which were introduced into evidence, fifteen were hearsay as to Siripan; none of the parties to those fifteen conversations were available to testify at the trial. Five of the fifteen included conversations relating to Siripan, and these formed the basis of the government's argument that he was a member of the conspiracy to import and sell heroin. There was, however, no independent evidence that the parties to those conversations were members of the conspiracy or that Siripan was a member of the conspiracy. Since they therefore could not have been admitted under Rule 801(d)(2)(E), they should have been excluded under Rule 802 as inadmissible hearsay.

Rule 801(d)(2)(E) allows the admission into evidence of statements by coconspirators only if there has been proof by a fair preponderance of independent evidence of the existence of a conspiracy and of the participation in it by the defendant and by the declarant. United States v. Broome, 732 F.2d 363 (4th Cir. 1984); United States v. Stroupe, 538 F.2d 1063 (4th Cir. 1976); United States v. Jones, 542 F.2d 186(4th Cir.), cert. den. 426 U.S. 922, 96 S.Ct. 2629, 49 L.Ed.2d 375 (1976). While there was evidence of a conspiracy, there was no independent evidence of the knowing participation therein by Siripan or Ang. Voravithaya could not be a member of the conspiracy since he was working for the government at the time the tapes were made. United States v. Chase, 372 F.2d 453 (4th Cir.), cert. den. 387 U.S. 907, 87 S.Ct. 1688, 18 L.Ed.2d 626 (1967).

The only eivdence outside the tapes relating to Ang was the listing of his name and telephone number in Siripan's calendar and address book. This alone is hardly sufficient to find him to be a coconspirator by even the slightest standard of proof. Siripan could have had his number for any number innocent reasons. Although the Fourth Circuit acknowledged that Siripan had challenged the independent evidence of Ang's

participation in the conspiracy, (Appendix, p. 5) it never addressed the issue of the declarants' alleged roles. Had it done so, it would have had to rule that the conversations were not admissible into evidence under Rule 801(d)(2)(E).

There is also a paucity of independent evidence of Siripan's participation in the conspiracy. There is no evidence that he carried money to Thailand, or that if he did, he had any knowledge of the purpose of that money. Without knowledge, there can be no intent and no conspiracy to perform an unlawful act. United States v. Dumas, 688 F.2d 84 (10th Cir. 1982); United States v. Magliano, 336 F.2d 817 (4th Cir. 1964).

The independent evidence shows that Siripan met Voravithaya on April 16, 1982 at the Sheraton Squire Hotel in New York City following a telephone conversation to set up the meeting. During that conversation, Voravithaya also gave Siripan a telephone number and urged him to call and say that they had talked. When the two men met at the hotel, they got on the elevator together, and it went to the ninth floor without stopping. It continued up after that. Voravithaya had $60,000 when he went to the hotel, but did not have it when he returned to Baltimore with the DEA agents. (The Court of Appeals opinion states that he did not have it when he returned to the lobby; however, the record merely shows he did not have it in Baltimore.) No one saw him give the money to Siripan.

The evidence also shows that Siripan was in Los Angeles, California on May 2, 1982, when he was arrested, In his possession were an address book and a pocket calendar, both of which had telephone numbers for "Ang" written in them. He also had round trip airplane tickets between Bangkok and Los Angeles and airplane tickets indicating he was in New York City on April 16. There was a slip of paper with Thai writing on it saying that a friend had gone to make inquiries about "stuff," a "thing," or an "article." Finally, there was a telephone bill for the house in California from which he was exiting which showed calls had been made to Bangkok, three of them to the number shown in his address book for "Ang" and which was listed as "M & S Transport Co." The California

telephone was listed under "Herbert Steinberg." There was no evidence as to who made the calls.

This is hardly enough evidence to demonstrate knowing participation by Siripan in a conspiracy to import heroin, even under the "slight connection" standard used by the Fourth Circuit. Even if an inference could be drawn that Siripan had received the money and taken it to Thailand (which Siripan does not concede), there is nothing to suggest that he had any knowledge of what the money was for. He could have been told it was for a legitimate business purpose, or even that it was for some other illegitimate purpose. Siripan's address book and calendar are full of business addresses and telephone numbers in the United States. The calls to Ang's number from the California house, even if made by Siripan, were made to a business number. It is just as plausible to assume that Siripan came to the United States on his own business and that he thought he was picking up the money for legitimate purposes as it is to assume that he knowingly participated in a conspiracy to import heroin.

Both the trial court and the Court of Appeals erred in holding that the taped conversations were admissible as coconspirator statements under Rule 801(d)(2)(E). The Court should therefore exercise its discretion to correct this improper application of Rule 801(d)(2)(E), which application resulted in a denial of due process to Siripan when inadmissible hearsay was used against him.

IV.

CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION BELOW IS CONTRARY TO OPINIONS OF THIS COURT THAT KNOWLEDGE IS ESSENTIAL TO PROOF OF PARTICIPATION IN A CONSPIRACY

Without the taped conversations, there is no evidence that Siripan participated in a conspiracy to possess and distribute heroin. See Part III, supra. Even if they are taken into consideration, and even if one infers that Siripan received and delivered the $60,000, there is no evidence that Siripan had any knowledge of the purpose of the money. As has long been held by this Court, without knowledge, there cannot be intent to participate in a conspiracy.

The essence of conspiracy is agreement. United States v. Watkins, 662 F.2d 1090 (4th Cir. 1981). As was said in United States v. Cherry, 639 F.2d 1335, 1338 (5th Cir. 1981):

> "It is elemental that in order to prove a criminal conspiracy the government must present direct or circumstantial evidence of an agreement among the conspirators to commit the offense. Circumstantial evidence may support a jury's findings, but there must still be proof beyond a reasonable doubt that the conspiracy existed, that the accused knew of it, and that he intended to join or associate himself with its objectives."

Knowledge is essential to show intent, since conspiracy requires the same intent as the substantive offense. United States v. Feola, 420 U.S. 671, 95 S.Ct. 1255, 43 L.Ed.2d 541 (1975); Ingram v. United States, 360 U.S. 672, 79 S.Ct. 1314, 3 L.Ed.2d 1503 (1959).

> "Without the knowledge, the intent cannot exist. * * * Futhermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. * * * This, because charges of conspiracy are not to be made out by piling inference

upon inference, thus fashioning * * * a dragnet to draw in all substantive crimes."

Direct Sales Co. v. United States, 319 U.S. 703, 711, 63 S.Ct. 1265, 1269 (1943)

No such clear and unequivocal evidence exists here, even if the telephone calls are considered.

The first time Siripan's existence was mentioned was in the Voravithaya to Ang call of April 12 (Exhibit 14(c) App. pp. 71-78). Voravithaya says that he does not want to return to Thailand, so Ang tells him that a friend is going the next day and will go to New York (App. pp. 71-74). Although it is unclear from this conversation, it appears that they are talking about two separate people going from Bangkok to the United States, for Voravithaya says he needs help, and Ang says he will send Deng. (App. p. 74). Later, they discuss the details of meeting with the man who is leaving the next day, and Voravithaya, who does not know this man, expresses concern that the man will be followed. Ang reassures him, saying, "[t]his guy is very clean." (p. 75).

The conversations between Ang and Voravithaya on April 15 and 16 also show that Siripan did not know the purpose of the money. In conversation number 4 (Exhibit 15(b), App. pp. 89-91), Ang says, "You can be with him when he calls me. . . You don't have to say anything to him," to which Voravithaya responds, "Ok! When I get to him, just pass over the document, right?"

There is no evidence that Voravithaya in fact passed over any money. In order to incriminate Siripan, he could have passed the money to someone else, or simply hidden it elsewhere at the hotel. No one saw him get off of the elevator after he got on with Siripan. He could have continued up. He could have gone to Siripan's room, chatted, then left with the money and stashed it somewhere before going back down.

Although Ang talks about "sending" this person, and says that, "I will tell him to come back immediately" (p. 76) it is apparent from Siripan's actions that he is not under Ang's direction and control (if in fact he is the person referred to in the April 13 conversation). When Voravithaya called Siripan at

the hotel in New York about getting together (Exhibit 15(b), pp. 92-93), Siripan was dismayed that he had to stay overnight, and Voravithaya was concerned that he might not wait for him. Siripan did not have Ang's telephone number, either; Voravithaya had to give it to him. (In Siripan's calendar and address book, Ang's number is written in a different pen than most of the entries and appears to have been added sometime later.) When he left New York, Siripan did not go straight to Bangkok, but instead went and spent some time in California (Exhibit 23(b), conversation No. 3, Appendix, p. 109).

On April 29 and 30, Ang and Voravithaya again conversed, Ang stating that "the same guy" would meet Voravithaya again. (Exhibit 22(b), App. pp. 101-107). This time, however, Voravithaya had to contact and meet Siripan in California. Since none of the other evidence suggests any connection with California, it is apparent that this arrangement was for Siripan's convenience. If he were the trusted money courier, Ang's "man" (as he was characterized repeatedly by the government in closing argument), it hardly seems likely that he would have displayed such independence.

The evidence also affirmatively demonstrates that Siripan had substantial ties with the United States. He had a resident alien's card and a California driver's license, a license that had previously expired in 1979. (Exhibit 33). His address books were full of business addresses in the United States, primarily in California, with a few in the Midwest and Texas. The address book (Exhibit 34) is interesting, for it appears that most of the addresses were written in one pen, as if transferred from an old address book. Only a few entries, including Ang's telephone numbers are in different ink, and appear to have been written more recently.

All of this suggests that Siripan was in the United States for some legitimate purpose, perhaps business, perhaps to visit his family. (In the April 13 conversation, Ang mentioned that Siripan has a wife and children here. Appendix, pp. 75-76) Based upon the evidence, it is just as likely that Siripan had no knowledge that any money he may have picked up was connected to the heroin trade. The only number he knew to call before Voravithaya provided him with another was the

number of M & S Transport Co., a business number. He could have believed that it was for a legitimate business transaction.

If Siripan were Ang's personal courier, he would have known Ang's telephone number and Voravithaya would have known who he was. He would have stayed in New York for whatever period of time it took to connect with Voravithaya without question or complaint. He would have gone immediately back to Bangkok, as Ang apparently wanted him to, rather than lingering in California. On the second trip, he would have gone to New York or Chicago to meet Voravithaya, rather than going to California. (Ang himself was willing to accommodate Voravithaya by arranging a meeting in Toronto rather than Vancouver because it was closer (Exhibit 20(b), Appendix, pp. 95-100).

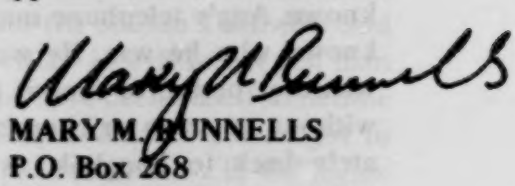
The guilty verdict probably was rendered as to Siripan because the jury was exposed to such overwhelming evidence against his co-defendants Steubing and Chindawongse. Pounds of heroin were passed to the jury, and the prosecutor made an impassioned plea for a guilty verdict against people who would traffic in such a drug in such quantities. As the Second Circuit Court of Appeals said, however, in United States v. Bufalino, 285 F.2d 408, 417 (1960), it is "improper to permit the jury to substitute a feeling of collective culpability for a finding of individual guilt." To prevent that from happening, "it is incumbent on trial judges to analyze with meticulous care the evidence as to each defendant." 285 F.2d at 418.

That meticulous scrutiny was absent here and it resulted in an improper finding of guilt as to Siripan.

Because the result is contrary to the decisions of this Court in United States v. Feola, supra; Ingram v. United States, supra, and Direct Sales Co. v. United States, supra, certiorari should be granted and the judgment of conviction set aside.

CONCLUSION

For all of the reasons set out herein, a writ of certiorari to the Fourth Circuit Court of Appeals should be allowed.



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Supreme Court, U.S.
FILED
OCT 28 1985
JOSEPH F. SPANIOL, JR
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

BORIPAT SIRIPAN

Petitioner

V.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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11/04

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-5265 (L)

United States of America,

Appellee,

versus

Sihadej Chindawongse
a/k/a Rajburi,

Appellant.

No. 82-5266

United States of America,

Appellee,

versus

Boripat Siripan

Appellant.

Appeals from the United States District Court for the District of Maryland, at Baltimore. Norman P. Ramsey, District Judge. (CR R-82-173)

Argued: May 9, 1985 Decided: August 28, 1985

Before MURNAGHAN, ERVIN and SNEEDEN, Circuit Judges

Robert L. Flax; Mary M. Runnells for Appellants; Ty Cobb, Assistant United States Attorney (J. Frederick Motz, United States Attorney; Susan M. Marzetta, Third Year Law Student on brief) for Appellee.

ERVIN, Circuit Judge:

Boripat Siripan and Sihadej Chindawongse a/k/a Rajburi appeal their convictions by a jury for conspiring to distribute heroin and for conspiring to possess heroin with the intent to distribute, both in violation of 21 U.S.C. § 846 (1982). In addition, Chindawongse appeals his conviction on two counts of distributing heroin in violation of 21 U.S.C. § 841(a)(1) (1982) and 18 U.S.C. § 2 (1982). For his crimes, Chindawongse was sentenced to thirty years in prison and was fined $75,000. He also received a special parole term of six years. Siripan was sentenced to fifteen years in prison and was fined $15,000.

Chindawongse and Siripan now assert several different grounds for reversal on appeal. After careful consideration of each allegation of trial error, we are convinced that reversal is not required. Consequently, we refuse to disturb the appellants' convictions and affirm the judgments of the district court.

I.

In March and April of 1982, Paul Primiano agreed to purchase a substantial quantity of heroin from Alexander Steubing, an American citizen, and Boonyarit Voravithaya ("BV"), a Thai national travelling in the United States. On March 27, 1982, Steubing met BV in Los Angeles and together they drove to Chicago. While in Chicago, BV obtained 1½ pounds of heroin from Sihadej Chindawongse, who at that time was serving as the Vice Consul of the Royal Consulate of Thailand in Chicago. On March 29, 1982, Steubing and BV drove to Carteret, New Jersey to meet Primino and make the sale. On April 2, 1980, BV returned to Chicago and, two days later, flew back to New Jersey carrying with him another 1½ pounds of heroin which he had received from Chindawongse. Upon BV's return, Steubing flew to Baltimore and distributed a small heroin sample to Gary Duggins. The next day, Steubing returned to New Jersey. On April 7, 1982, Steubing and BV travelled together to Baltimore and Steubing once again gave Duggins a small sample of heroin. On April 9, 1982, Steubing and BV were arrested as they attempted to flee from DEA agents in Baltimore. A search of their luggage uncovered a pound of 91% pure heroin and $54,670 in cash.

Upon his arrest, BV gave a complete and full confession and agreed to cooperate in facilitating the arrest of his co-conspirators by acting as an undercover agent.[1] In this capacity, BV made a number of monitored tape recorded telephone calls to Viroj Chitmongkollert (a/k/a Ang) and Pirom Chongcharoen (a/k/a Dang), his alleged heroin suppliers and superiors in Thailand, to Chindawongse in Chicago, and to Primiano in New Jersey. Chitmongkollert and Chongcharoen told BV that he was to pay their messenger in New York City the $60,000 which BV at that time owed them. After the $60,000 payment was made, the Thai suppliers told BV he would be able to receive three pounds of heroin from Chindawongse in Chicago.

Pursuant to his instructions from Chitmongkollert and Chongchareon, BV telephoned Boripat Siripan in Room 902 at the Sheraton City Squire Hotel in New York City on April 15, 1982 and arranged a meeting for the following day. Siripan was registered in Room 902, and hotel records reflect that during his stay at the hotel he telephoned the numbers in Thailand used by Chitmongkollert and Chongchareon.

On April 16, 1982, while under DEA surveillance, BV met with Siripan in the lobby of the Sheraton City
BV was carrying with him the $60,000 in cash. BV and Siripan had a drink together at the bar, and then entered the elevator. The elevator proceeded directly to the ninth floor. BV returned to the hotel lobby soon thereafter without Siripan or the $60,000 in cash.

Subsequently, BV proceeded to Chicago with DEA agents to receive the three pounds of heroin from Chindawongse that was now made available to BV as a consequence of his $60,000 exchange with Siripan. On April 20, 1982, BV received two pounds of 98% pure heroin from Chindawongse at the Little Corporal Restaurant in Chicago. The next day, after BV placed another call to Chitmongkollert in Thailand, BV received an additional pound of 98% pure heroin from Chindawongse at the same restaurant. Both transactions were under DEA surveillance. Finally, on April 27, 1982, Chinda-

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[1] BV agreed to plead guilty to conspiring to distribute heroin in violation of 21 U.S.C. § 846 (1982).

wongse retrieved a diplomatic pouch addressed to the Royal Consulate of Thailand at Chicago's O'Hare International Airport. Later that day, after taking the pouch back to the Thai consulate, Chindawongse was observed holding a "distinctive" bag outside the Thai consulate's office. Three days later, on April 30, 1982, Chindawongse was arrested in Chicago. A search of his home uncovered the same distinctive bag observed by DEA agents three days before. It contained 4½ pounds of 98% pure heroin.

Meanwhile, on April 29, 1982, Chitmongkollert advised BV to meet with Siripan once again. BV was told to pay Siripan $240,000 which would enable BV to receive 4½ pounds of heroin from Chindawongse in Chicago. Chitmongkollert gave BV a telephone number in California at which he would be able to contact Siripan. Subsequently, on May 2, 1980, DEA agents arrested Siripan at the address for which that California telephone number was listed. A search of Siripan's house revealed an address book with the telephone numbers in Thailand used by Chitmongkollert and Chongchareon, used plane tickets to New York confirming his presence in the city on April 16, 1982, another used ticket indicating his travel from Bangkok, Thailand to California on April 30, 1982, and a message in Thai, translated variously as "friend from Muangthong Housing Estate has gone to inquire about the [stuff, article or thing] intrusted from Huahin."[2]

One week later, on May 9, 1982, BV became the victim of an apparent suicide. Subsequently, Siripan and Chindawongse were indicted, tried by a jury, convicted of conspiring to distribute,[3] and sentenced to substantial terms of imprisonment. Each now asserts two principal arguments for reversal of their convictions on this appeal.

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[2]This message, consistent with other coded writings in the conspiracy, used geographic locations in Thailand to identify members of the conspiracy. This message, asserts the government, instructs Siripan to receive a package from one individual in trust for another.

[3]In addition, Chindawongse was convicted on two substantive counts of distributing heroin in violation of 21 U.S.C. § 842(a)(1) (1982) and 18 U.S.C. § 2 (1982).

II.

Siripan's principal contention on appeal is that BV's tape recorded conversations with Chandawongse and his co-conspirators were improperly admitted into evidence against Siripan because (1) the statements are hearsay, and (2) their admission violated the confrontation clause. We will consider each argument in turn.

A. Hearsay

Out-of-court statements made by co-conspirators "during the course of and in the furtherance of the conspiracy" are not hearsay and are admissible under Rule 801(d)(2)(E) of the Federal Rules of Evidence. However, in order for these statements to be admitted against a co-conspirator under this exception to the hearsay rule, the district court must first find " 'the existence of and the [defendant's] participation in the conspiracy' by a fair preponderance of independent evidence." United States v. Scott, 730 F.2d 143, 148 (4th Cir. 1984), cert. denied, 105 S.Ct. 572 (1985) (quoting United States v. Portsmouth Paving Corp., 694 F.2d 312, 320 (4th Cir. 1982)); see also United States v. Hines, 717 F.2d 1481, 1488 (4th Cir. 1983), cert. denied, 104 S.Ct. 2656, 104 S.Ct. 2668 (1984). Siripan argues that the tape recorded conversations were erroneously admitted into evidence because there was no independent evidence that either the parties to the conversations or Siripan himself were involved in a conspiracy to import and distribute heroin. We disagree.

As an initial matter, the government clearly produced enough independent evidence to prove the existence of an international conspiracy to import and distribute heroin in the United States through the Royal Consulate of Thailand in Chicago. The testimony of various DEA agents, the introduction into evidence of numerous telephone, hotel and airline records, and the production of the physical evidence seized from the appellants and their co-conspirators together constitute "prima facie proof of the conspiracy." United States v. Vaught, 485 F.2d 320, 323 (4th Cir. 1973). Consequently, our analysis shifts to a consideration of whether Siripan's participation in this conspiracy was proven "by a fair preponderance of independent evidence." Scott, 730 F.2d at 148.

The standard by which we must judge the sufficiency of Siripan's participation was set forth by this court in United

States v. Laughman, 618 F.2d 1067, 1076 (4th Cir.), cert. denied, 447 U.S. 925 (1980) as follows:

> 'Once the existence of a conspiracy is established, evidence establishing beyond a reasonable doubt a connection of the defendant with the conspiracy, even though the connection is slight, is sufficient to convict him with knowing participation in the conspiracy.'

(quoting United States v. Dunn, 564 F.2d 348, 357 (9th Cir. 1977) (emphasis in original); see, e.g., United States v. Spoone, 741 F.2d 680, 685 (4th Cir. 1984). "The evidence of the 'slight connection', however, must be of the quality which will reasonably support a conclusion that the defendant wilfully participated in the unlawful plan with the intent to further some object or purpose of the conspiracy." United States v. Miranda-Uriarte, 649 F.2d 1345, 1349-50 (9th Cir. 1981).

In the case at bar, the government produced sufficient independent evidence of Siripan's connection to the conspiracy to establish his knowing and wiliful participation in the conspiracy. On April 16, 1982, Siripan met with BV in the lobby of the New York Sheraton City Squire Hotel. They had a drink together at the hotel bar and then rode the elevator to ninth floor. Siripan had a room on the ninth floor, room 902. BV was carrying $60,000 when he entered the elevator. He did not have the money when he returned to the hotel lobby several minutes later. In addition, telephone records at the hotel and at the house in which Siripan lived in California indicated that Siripan had telephoned the numbers in Thailand used by Chitmongkollert and Chongchareon, allegedly the drug suppliers in the Far East. Siripan had these numbers in his address book when he was arrested. A search of Siripan's house also revealed (1) used airplane tickets from Los Angeles to New York thus confirming his presence in New York City at the time of BV's $60,000 payoff to free up the additional three pounds of heroin in Chicago, (2) a used airplane ticket indicating his travel from Bangkok, Thailand to Los Angeles on April 30, 1982, the very day Chitmongkollert had advised BV that his messenger would arrive in California, and (3) a coded Thai message translated variously as "friend from Muangthong Housing Estate has gone to inquire about the [stuff, article of thing] intrusted from Huahin" and meaning that Siripan was to receive a package from one individual in trust for another. Taken together, these inculpatory pieces of

evidence and all the inferences that logically may be drawn from these "reasonably support a conclusion that [Siripan] wilfully participated in the unlawful plan with the intent to further some object or purpose of the conspiracy." Miranda-Uriarte, 649 F.2d at 1349-50. Since this evidence establishes the requisite "independent evidence" of Siripan's participation in the conspiracy, the tape recorded conversations of Siripan's co-conspirators were admissible against him under Fed. R. Evid. 801(d)(2)(E).[4] See United States v. Mitchell, 733 F.2d 327, 330 (4th Cir. 1984), cert. denied, 105 S.Ct. 520 (1985); United States v. Lee, 726 F.2d 128, 132 (4th Cir.), cert. denied, 104 S.Ct. 3540 (1984); United States v. Lisotto, 722 F.2d 85 (4th Cir. 1983), cert. denied, 104 S.Ct. 1682 (1984); United States v. Keily, 718 F.2d 661, 663-664 (4th Cir. 1983); Hines, 717 F.2d at 1288; United States v. Robinson, 707 F.2d 811, 813 (4th Cir. 1983); United States v. Dockins, 659 F.2d 15, 16-17 (4th Cir. 1981); United States v. McCormick, 565 F.2d 286, 289-290 (4th Cir. 1977), cert. denied, 434 U.S. 1021 (1978).

B. The Confrontation Clause

Siripan also argues that his sixth amendment rights were violated by the admission of the tape recorded conversations

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[4]The trial court "technically erred" by permitting the jury to determine whether the consensually monitored tape recorded conversations were admissible under Fed. R. Evid. 801(d)(2)(E). See Spoone, 741 F.2d at 686 n. 1. Whether out-of-court settlements made by co-conspirators "during the course of and in furtherance of the conspiracy," Fed. R. Evid. 801(d)(2)(E), are admissible or not is a "legal question to be resolved by the trial court," Spoone 741 F.2d at 681 n. 1, upon a consideration of the sufficiency of the independent evidence indicating "the existence of and the [defendant's] participation in the conspiracy." Portsmouth Paving Corp., 694 F.2d at 320; see also, e.g., Vaught, 485 F.2d at 323; Hines, 717 F.2d at 1488; United States v. Jones, 542 F.2d 186, 203 n. 33 (4th Cir.), cert. denied, 426 U.S. 922 (1976). However, as we concluded in Spoone, because we have "independently reviewed the record and have concluded that [the tape recorded conversations] were admissible, this ['technical'] error . . . was harmless." Spoone, 741 F.2d at 686 n. 1.

without his having an opportunity to cross-examine the declarants on the tapes.[5] He contends that because "the statements are not sufficiently trustworthy to pass constitutional muster," they may not be admitted into evidence under the Supreme Court's decision in Ohio v. Roberts, 448 U.S. 56 (1980). We do not agree.

In Ohio v. Roberts, the Supreme Court held that the introduction of hearsay statements against a criminal defendant will not violate the confrontation clause of the sixth amendment if (1) the government establishes that the declarant is unavailable, and (2) the statements to be admitted bear sufficient "indicia of reliability." Id. at 65. However, the Court went on to explain that "reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception." Id. at 66. Consequently, the issue presented for resolution on this appeal is whether statements of an unavailable declarant that are admissible under the co-conspirator's exception to the hearsay rule, Fed. R. Evid. 801(d)(2)(E), necessarily satisfy the requirements of the confrontation clause by virtue of the Supreme Court's decision in Roberts.[6]

In resolving this issue, the Second, Third, Eighth and Ninth Circuits have held that the requirements of admissibility under Rule 801(d)(2)(E) are not identical to the requirements under the confrontation clause and that "courts must assess the circumstances of each case to determine whether the statements carry with them sufficient indicia of reliability." Sanson v. United States, No. 83-1324, slip op. (7th Cir. January 18,

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[5]The principal declarants were unavailable at trial because (1) BV had apparently committed suicide prior to trial, (2) Chitmongkollert and Chongchareon were fugitives in Thailand, and (3) Chindawongse was Siripan's co-defendant at trial.

[6]The Supreme Court has recently denied petitions for certiorari directly raising this issue on at least two occasions. See Sanson v. United States, No. 83-1324, slip op. (7th Cir. January 18, 1984), cert. denied, 82 L.Ed.2d 861 (1984); Gibbs v. United States, 739 F.2d 838, 847 (3d Cir. 1984), cert. denied, 105 S.Ct. 779 (1985); see also Masi v. United States, No. 83-1351, slip op. (2d Cir. April 6, 1984), cert. denied, 53 U.S.L.W. 3528 (January 21, 1985).

1984), cert. denied, 82 L.Ed.2d 861 (1984), (White, J., dissenting). See United States v. Wright, 588 F.2d 31, 37-38 (2d Cir. 1978), cert. denied, 440 U.S. 917 (1979); United States v. Ammar, 714 F.2d 238, 254-257 (3d Cir.), cert. denied, 104 S.Ct. 344 (1983); United States v. Massa, 740 F.2d 629, 638-640 (8th Cir. 1984), cert. denied, 53 U.S.L.W. 3824 (1985); United States v. Kelley, 526 F.2d 615, 620-621 (9th Cir. 1975), cert. denied, 424 U.S. 971 (1976); United States v. Perez, 658 F.2d 654, 660 and n.5 (9th Cir. 1981). However, the First, Fifth and Seventh Circuits have held that statements admissible under Rule 801(d)(2)(E) are presumptively reliable and therefore admissible under the confrontation clause. See Ottomano v. United States, 468 F.2d 269, 273 (1st Cir. 1972), cert. denied, 409 U.S. 1128 (1973); United States v. Peacock, 654 F.2d 339, 349-350 (5th Cir. 1981), cert. denied, 104 S.Ct. 404 (1983); United States v. Xheka, 704 F.2d 974, 987 n.7 (7th Cir.), cert. denied, 104 S.Ct. 486 (1983); United States v. Papia, 560 F.2d 827, 836 n.3 (7th Cir. 1977).

The Fourth Circuit's resolution of this issue is somewhat confusing. In United States v. Lurz, 666 F.2d 69, 80-81 (4th Cir. 1981), cert. denied, sub nom. Magill v. United States, 455 U.S. 1005, sub nom. Steedman v. United States, 457 U.S. 1136 and 459 U.S. 843 (1982), we seemed to cast our lot with the First, Fifth and Seventh Circuits by declaring, "[t]he Lurz statements came in under FRE 801(d)(2)(E) as exceptions to the hearsay rule. So admitted, they do not violate the confrontation clause." However, two years later, in United States v. Lissotto, 722 F.2d 85, 88 (4th Cir. 1983), cert. denied, 104 S.Ct. 1682 (1984), we made an assessment of whether or not the hearsay statements carried with them sufficient indicia of reliability in order to satisfy the requirements of the confrontation clause despite the fact that we had previously concluded in that case that the statements were admissible under Rule 801(d)(2)(E). Consequently, we have adopted seemingly contradictory positions in resolving this issue.

It is clear, however, that Lissotto did not concern itself with the Supreme Court's invitation to infer the reliability of these statements where they are in a "firmly rooted" exception to the hearsay rule. Roberts, 448 U.S. at 66. It is our conclusion that the Rule 801(d)(2)(E) co-conspirator's exception to the hearsay rule is just such a "firmly rooted hearsay exception." The Supreme Court has long held that the confronta-

tion clause countenances only hearsay that is so truthworthy that it "augments accuracy in the factfinding process." Roberts, 448 U.S. at 65; see Snyder v. Massachusetts, 291 U.S. 97, 107 (1934). " '[T]he hearsay rules and the confrontation clause are generally designed to protect similar values', California v. Green, 399 U.S. 149, 155 (1970), and 'stem from the same roots,' Dutton v. Evans, 400 U.S. 74, 86 (1970)." Roberts, 448 U.S. at 67. However, "certain hearsay exceptions rest upon such solid foundations that admission of virtually any evidence within them comports with the 'substance of the constitutional protection.' " Id. at 67 (quoting Mattox v. United States, 156 U.S. 237, 244 (1895)). Fed. R. Evid. 801 (d)(2)(E) permits the introduction into evidence of a statement against a party made by his co-conspirator "during the course of and in furtherance of the conspiracy." As indicated above, such a statement can only be admitted, however, if the government first proves "the existence of and the [defendant's] participation in the conspiracy by a fair preponderance of independent evidence." Scott, 730 F.2d at 148. It is our conclusion that evidence admitted under this Rule 801(d)(2)(E) standard bears sufficient "indicia of reliability" and "guarantees of trustworthiness" to satisfy the commands of the confrontation clause.

Consequently, we reaffirm this court's holding in Lurz that the requirements of admissibility for out-of-court statements by unavailable co-conspirators under Rule 801(d)(2)(E) are identical to the requirements for admissibility under the confrontation clause. Since the tape recorded conversations implicating Siripan were properly admitted in evidence under Rule 801(d)(2)(E), their admission does not violate the confrontation clause.

III.

Siripan's remaining argument on appeal is that the government did not produce sufficient evidence at trial to support his conviction. This argument is totally without merit.

Viewing the evidence in the light most favorable to the government, United States v. Tresvant, 677 F.2d 1018, 1021 (4th Cir. 1982), it is clear that a rational jury could have reasonably found Siripan guilty of knowingly participating in a conspiracy to distribute heroin beyond a reasonable doubt. The facts which provide independent evidence of Siripan's

participation in the criminal conspiracy,[7] taken together with the tape recorded conversations between BV and his Thai drug suppliers, are more than sufficient evidence of Siripan's participation in the conspiracy to support his conviction.

IV.

Chindawongse also raises two issues on this appeal, neither of which has merit. First, Chindawongse argues that the denial of his motion for severance improperly prevented him from introducing exculpatory evidence which he contends could only have been introduced at a separate trial. However, Chindawongse did not set forth particularized facts and circumstances in his motion to sever which indicated that his right to a fundamentally fair trial would be sacrificed by a denial of his motion.[8] See United States v. Parodi, 703 F.2d 768, 780 (4th Cir. 1983); United States v. Shuford, 454 F.2d 772, 780 (4th Cir. 1971). He merely asserts "vague and conclusory" allegations which fail to "establish the 'exculpatory nature and effect' of the co-defendant's testimony," and, therefore, are inadequate grounds for an order of severance.

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[7] See Section II A, supra at 7-11.

[8] Chindawongse's motion to sever reads as follows:

1. This Defendant, SIHADEJ CHINDAWONGSE, is impermissibly joined with the remaining co-Defendants in violation of Rule 8 of the Federal Rules of Criminal Procedure.

2. The Defendant-Petitioner may testify on behalf of one of several of the Co-Defendants in this cause.

3. One or several of the other Co-Defendants may testify on behalf of the Petitioner.

4. If the Petitioner is not severed from the Co-Defendants, he will not be able to testify or possibly benefit from their testimony.

5. Failing to sever the Petitioner from the other Co-Defendants, with whom he has never had any contact, will cause extreme prejudice.

(JA 5-6).

Parodi, 703 F.2d at 780 (quoting United States v. Butler, 611 F.2d 1066, 1071 (5th Cir.), cert. denied, 449 U.S. 830 (1980)). Indeed, given the extent of the evidence in the record against Chindawongse,[9] severance would have at most enabled Chandawongse to only have a "better chance of acquittal" or "an opportunity to proffer evidence which 'merely contradicts part of the Government's proof.' " Parodi, 703 F.2d at 780 (quoting United States v. West, 670 F.2d 675, 680 (7th Cir. 1982), cert. denied, 102 S.Ct. 2944 (1983)). Such a result may not justify an order of severance. The denial of severance in this case did not "deprive the defendant of a fair trial" and did not "result in a miscarriage of justice." United States v. Becker, 585 F.2d 703, 706 (4th Cir. 1978), cert. denied, 439 U.S. 1080 (1979); see Parodi, 703 F.2d at 780. Accordingly, the district court did not err in denying Chindawongse's motion.

Chindawongse's second contention on appeal is that as the Vice-Counsul of the Royal Consulate of Thailand in Chicago, he was entitled to a diplomatic immunity from prosecution for his alleged crimes. However, as a Thai consular officer, Chindawongse was not entitled to absolute diplomatic immunity. See 22 U.S.C. §§ 254(a)-(e) (1982) (codifying the Diplomatic Relations Act). Such is the prililege only of those diplomatic agents assigned to the Thai embassy in Washington, D.C. See id., §§ (a), (c); Vienna Convention on Diplomatic Relations, opened for signature April 18, 1961, art. 29, 23 U.S.T. 3227, 3240, T.I.A.S. No. 7502. Instead, pursuant to the Vienna Convention on Consular Relations, opened for signature April 24, 1963, art. 41, 21 U.S.T. 77, 103, T.I.A.S. No. 6820, consular offic[illegible] such as Chindawongse may be arrested or detained, but only "in the case of a grave crime and pursuant to a decision by a competent judicial authority."[10]

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[9]The evidence against Chindawongse is even referred to as "overwhelming" in his own brief. See Appellants' Brief at 19.

[10]Thailand was a signatory to both the Vienna Diplomatic Relations and Consular Relations Treaties. See 23 U.S.T. at 3429 and 21 U.S.T. at 367. Because Thailand had not formally ratified either treaty at the time of Chindawongse's arrest and prosecution, general consular relations between the United States and Thailand were then and are now deter-

(Footnote Continued)

In this case, Chindawongse was arrested pursuant to a warrant issued by a federal magistrate and was indicted by a federal grand jury for various felong drug offenses under Title 21 of the United States Code. A federal magistrate and a federal grand jury are "competent judicial authorities" in the United States and felony drug offenses under Title 21 are "grave crimes." Consequently, since Chindawongse was arrested and indicted "pursuant to a decision by a competent judicial authority" in the United States, it was proper to prosecute him for the "grave crimes" alleged in his indictment. Chindawongse was not entitled to an immunity from prosecution in this case.

IV.

For the reasons, the convictions of the appellants are

AFFIRMED.

(Footnote Continued)
mined by the bilateral Treaty of Amity and Economic Relations, May 29, 1966, United States-Thailand, 19 U.S.T. 5843, T.I.A.S. No. 6540 (effective June 8, 1968). In an exchange of notes that were made a part of this treaty as ratified, the two countries agreed that their consular officers and agents "shall be entitled on condition of reciprocity to . . . enjoy all the . . . exemptions and immunities of every kind which are, or may be, accorded to consular officers of the most favored nation." Id. at 5875, 5877, 5879.

The United States State Department interprets the "condition of reciprocity" to mean that for the "condition" to take effect, both Thailand and the United States must negotiate an agreement with respect to special consular immunities, beyond that of international law. As there has been no such "special" agreement negotiated, the United States does not recognize any Thai consular immunities greater than those demanded by international law under the Vienna Convention.

Although Thailand has still not ratified the Vienna Consular Relations Treaty, that Treaty codifies international law on consular relations and is adhered to by both the United States and Thailand. Thus, its provisions detail the actual immunities enjoyed by Thai consular officers in the United States. Those immunities do not extend to insulating consular officials from prosecution for grave offenses such as conspiracy to distribute and distribution of heroin.

SWORN STATEMENT

The sworn statement of BOONYARIT VORAVITHAYA, was taken on Friday, April 9, 1982, commencing at approximately 2:15 p.m., at the United States Attorney's Office, United States Courthouse, 101 West Lombard Street, Baltimore, Maryland, 21201, before Joseph A. Grabowski, Notary Public.

APPEARANCE:
TY COBB, ESQUIRE
Assistant U.S. Attorney

ALSO PRESENT:
SPECIAL AGENT RICHARD BORONYAK
SPECIAL AGENT KEITH MILLER
SPECIAL AGENT FRANCIS C. McCORMACK
GROUP SUPERVISOR WILLIAM NELSON
CUSTOMS PATROL OFFICER DENNIS BASS

REPORTED BY:

Joseph A. Grabowski, RPR

PROCEEDINGS

MR. COBB: This is going to be a sworn statement, and, Boon, spell your name for us.

MR. VORAVITHAYA: B-O-O-N-Y-A-R-I-T.

MR. COBB: Is that one name?

MR. VORAVITHAYA: That is first name. Last name, V-O-R-A-V-I-T-H-A-Y-A. Date of birth, 2/8/54. Height, five six. Weight, hundred and thirty.

MR. COBB: I am Ty Cobb, Assistant U.S. Attorney. Boon was arrested this morning at a quarter of 12:00 at the Holiday Inn in Baltimore City on Lombard Street, along with another individual. Agent McCormack will now read him his rights for the record.

MR. VORAVITHAYA: Get my old lady out of there as soon as possible, please.

SPECIAL AGENT McCORMACK: Boon, before we

ask you any questions, it is my duty to advise you of your rights.

Do you understand you have the right to remain silent? Do you understand?

MR. VORAVITHAYA: (Nodded his head.)

MR. McCORMACK: Do you understand that anything you say can and will be used against you in a court or other proceedings?

MR. VORAVITHAYA: Yes.

SPECIAL AGENT McCORMACK: Do you understand that you have the right to talk to a lawyer before we ask you any questions and to have him with you during the questioning?

MR. VORAVITHAYA: Yes, I do.

SPECIAL AGENT McCORMACK: If you cannot afford or otherwise obtain a lawyer, and you want one, a lawyer will be appointed for you by the U.S. Magistrate or the Court, and we will not ask you any questions until he has been appointed. If you decide to answer now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

However, you may waive your right of advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire. Do you understand your rights?

MR. VORAVITHAYA: Yes, I do.

SPECIAL AGENT McCORMACK: Do you elect to waive them and make a statement?

MR. VORAVITHAYA: Yes, I do.

MR. COBB: Boon, you were read your rights previously immediately after being arrested, is that correct?

MR. VORAVITHAYA: Say that again.

MR. COBB: You were also read your rights immediately after being arrested?

MR. VORAVITHAYA: Yes.

MR. COBB: And you have had other conversations with agents of the Drug Enforcement Administration this morning, is that correct, and this afternoon? You have already had some conversations?

MR. VORAVITHAYA: Yes, I did.

MR. COBB: And in those conversations you had also voluntarily waived your rights with regard to those conversa-

tions, is that correct?

MR. VORAVITHAYA: Yes, I did. Everything I said was fact.

MR. COBB: And you agreed to waive your rights and to discuss --

MR. VORAVITHAYA: Cooperate.

MR. COBB: And cooperate.

MR. VORAVITHAYA: With the Government.

MR. COBB: And outside of the fact that you have been advised that the Government will make every effort to bring your wife out of Thailand to the United States.

MR. VORAVITHAYA: She is not my wife yet, she is my wife to be. But, you know, you told me that you were going to get her out within a couple of days to come here.

MR. COBB: That is correct.

MR. VORAVITHAYA: To see me.

MR. BOGG: We have told you we will make every effort immediately to bring your wife out of Thailand, or your wife to be out of Thailand, and bring her to the United States where you can visit with her.

MR. VORAVITHAYA: Right, here.

MR. COBB: You also understand that although you have agreed to cooperate, that in terms of a specific plea agreement, none has been arranged as yet. That the conditions of your plea agreement will depend on both the nature of your cooperation, and the extent to which we are able to corroborate everything you say. Do you understand that?

MR. VORAVITHAYA: I understand that.

MR. COBB: And there is no specific agreement between yourself and the United States at this time, other than the fact that we have agreed to permit you to cooperate, and we are going to bring your wife to be to the United States as soon as possible; is that correct?

MR. VORAVITHAYA: Right, and you are going to protect me, and do the best you can to not have me in jail.

MR. COBB: We are going to bring your cooperation to the judge, the extent to which you cooperate. But you understand you will be charged and you will be taken before a judge. Is that correct?

MR. VORAVITHAYA: And I am still on the witness program.

MR. COBB: That I don't know, and I can't confirm

that at this time.

MR. VORAVITHAYA: I'm still on the program.

MR. COBB: I understand.

MR. VORAVITHAYA: You can call Shirley Stutly (phonetically) and Gerald Cheryl (phonetically), he runs the thing.

MR. COBB: We will try to do that. And I understand that you say you are still on the witness protection program. You still understand that for the purposes of the events which you have just been arrested, you will be charged, and that you will be taken before a judge, and your cooperation, should it prove accurate and reliable, will be brought to the attention of that judge, and a plea agreement will be negotiated between yourself and our office.

MR. VORAVITHAYA: Right.

MR. COBB: But at this time you have not been promised that you will not be charged. Do you understand that? You understand that you are to be charged with a crime.

MR. VORAVITHAYA: Yes, I do. But the only thing I don't understand if I cooperate all the way, I don't want you to let the word out that I'm busted.

MR. COBB: Absolutely.

SPECIAL AGENT McCORMACK: We are not telling anyone you have been busted.

MR. VORAVITHAYA: Because I want to call them, I'll say hey, I'm all right, I'll be home. But I am not going to be home, because this thing is still moving, they want some more stuff, this and that.

SPECIAL AGENT McCORMACK: Can you make arrangements for anyone to make a delivery here for you?

MR. COBB: Let me just resolve this first. But as it stands now, you understand that we do not have a specific agreement other than the fact that the United States has agreed to bring your wife to be to the United States, and if your cooperation is complete and truthful, we will bring your cooperation to the judge that sentences you.

MR. VORAVITHAYA: What about my back-up? I am violating parole.

MR. COBB: That is what I am getting on the record. We don't have a specific agreement. We can negotiate all these things subject to your cooperation. See, we can't resolve it all right now in the next hour or so.

MR. VORAVITHAYA: Well, Ty, be frank with me,

okay? Like John, John knows me very well.

MR. COBB: And you are referring to an Assistant United States Attorney in California.

MR. VORAVITHAYA: Right. Mr. John Gibbons. You can talk to him. He will tell you whatever I say I give it all.

MR. COBB: Boon, I understand.

MR. VORAVITHAYA: He probably done told you that. I said, John, I know you're mad at me; but, please, when I went home I had to go hide out for two months, because they was trying to kill me.

MR. COBB: And you have spoken with him today, is that correct?

MR. VORAVITHAYA: Right.

MR. COBB: And since you have been arrested, is that correct? You have spoken to John Gibbons since you have been arrested.

MR. VORAVITHAYA: Right.

MR. COBB: All I am trying to establish for the record is that you are going to cooperate, but your cooperation is free and voluntary, and not the result of any agreement we have yet.

MR. VORAVITHAYA: I want you to do the best possible for me and my wife. All I want to do is I am asking you if it is possible, you know, if it is possible for you to, I mean like get me a plea and get me a suspended sentence, and send me and my wife to be back to England.

MR. COBB: We understand what you want. But you understand that we have not agreed to anything yet, because we have to –

MR. VORAVITHAYA: You have to listen to me.

MR. COBB: Right. And that there is absolutely no agreement, we have not offered you anything other than the fact that we will bring your wife out and we will permit you to cooperate and bring your cooperation to the sentencing judge.

MR. VORAVITHAYA: Okay. Today is Friday, Saturday over there. If you can call Monday over there, she can get the visa and fly over here.

MR. COBB: We will try to get her over here immediately. But I am just trying to establish, and we have got to roll on this, I am just trying to establish for the record that you are cooperating freely and voluntarily, having waived your rights, but it is not the result of any specific agreement we have, is that correct?

MR. VORAVITHAYA: (Nodded his head.)

MR. COBB: And you understand the full terms of any agreement will be negotiated subject to your statement, is that correct?

MR. VORAVITHAYA: Right. But for the time being my wife will be here next week.

MR. COBB: Hopefully. We are going to do everything we can to bring her here.

MR. VORAVITHAYA: You can tell them to give her a visa.

MR. COBB: We will certainly do that. I don't anticipate any problems, and we are going to do everything we can right now to get her here.

MR. VORAVITHAYA: Please. Please.

MR. COBB: But that is the only agreement you have with us, is that correct?

MR. VORAVITHAYA: I don't care about my life, I care about hers.

MR. COBB: Try to understand my question, because we are under a time constraint right now, I have to go down to court.

You understand there is no initial agreement between us, you are being allowed to cooperate, because you have asked us if you can cooperate; is that correct?

MR. VORAVITHAYA: (Nodded his head.)

MR. COBB: And you want to give a full statement.

MR. VORAVITHAYA: Voluntarily, yes.

MR. COBB: Who wants to start the questioning; I have got to roll, but I will be right back. (Ty Cobb left the room.)

BOONYARIT VORAVITHAYA,

having been first duly sworn according to law, was examined and testified as follows:

BY SPECIAL AGENT BORONYAK:

Q Boon, my name is Special Agent Richard Boronyak. Behind me is CPO Dannis Bass from Customs; and this is Special Agent Keith Miller.

Everything we say here today is going to be recorded by a stenographer. Do you agree to that?

A Yes, I do.

BY CPO BASS:

Q Boon, what we would like to do is like for you to go back from after you got out of jail, out on the west coast. You were put on witness protection, and you then what, went back to Thailand?

A Right.

Q Start back then, and give me the approximate date, and then work up till today, when you were arrested.

A Okay.

Well, I think I left November 3rd, 1981. As soon as I got home I was trying to hide out.

Q This was back to Thailand?

A Yes.

Q In other words, you left to go back to Thailand.

A Yeah, because you know for what I did. And then apparently they knew I was there. So I was like – they want me to show them that I wasn't doing the thing that I was doing.

BY SPECIAL AGENT BORONYAK:

Q When you are talking thing, just go ahead and say it. If it was drugs, just go ahead and say it.

A Yeah. I went and testified against all these guys, and cooperated with the Government.

BY CPO BASS:

Q The United States Government.

A Right, with Mr. John Gibbons.

Q So when you went back to Thailand, what you are saying is you thought the people in Thailand knew that you were cooperating?

A They knew.

Q They already did know.

A Yeah.

Q Had you already fingered somebody in Thailand? Had you already pointed somebody out in Thailand that was arrested in California?

BY SPECIAL AGENT MILLER:

Q Did you testify against anybody in Thailand?

A No. I testified against a whole bunch of people in California.

BY CPO BASS:

Q But were they citizens of Thailand you testified against?

A No.

Q Just Americans?

A Right. Because they couldn't get to them.

Q But did you tell them who they were?

A Yes.

Q And they knew that.

A They knew. And they were the same people that sent me here.

Q This time.

A This time, because you know, like they were going to kill me, and they were going to take my wife to be, and all this and that.

Q So what you are saying is the same people you are working for now were the same people you worked for when you were busted last time.

A Right. It is not that I am working for them. It is that I owe them, because they want me to prove to them that I'm not, you know, doing . . .

Q How many people are we talking about over in Thailand that you are working for?

A It's about, approximately about six. Five, six people.

Q Can you name them for us?

A Yeah.

Q You will have to do it slow and spell their names for us.

A Do you want me to write it down?

BY SPECIAL AGENT BORONYAK:

Q No, you can spell it out.

A One of them is Pirom Cseongalen, P-I-R-O-M –

BY CPO BASS:

Q P-I-R-O-M?

A M. And last name, Cseongalen –

Q C-H-U-N-G, like Chung?

A C-S-E-O-N-G-A-L-E-N, or something like that. And Viroy, V-I –

Q Is this another person now?

A Right.

Q All right. V-I.

C-H-I-T-M-O-N-G-K-O-L-E-R-T.

Q About how old is he?

A They are about thirty-five.

Q Both of them?

A Yeah.

And then his brother is Pravit, P-R-A-V-I-T, same last name.

Q This is Chitmongkolert?

A Right.

Q How old is his brother?

A About forty years old.

Q Who else?

A And I don't know the other guy's name, but I know him by Charlie. You can call Special Agent in LA, his name is Dan Fout, F-O-U-T, someting like that. He knows.

Q So one of the guys – all right. These four people you have mentioned, they are all citizens of Thailand?

A Right.

BY SPECIAL AGENT MILLER:

Q What part of Thailand do they live in?

A Bangkok. Viroj Chitmongkolert house phone number is 397-1810.

BY CPO BASS:

Q That is his telephone number?

A Right, that is his home phone number. And the office number is 235-4070.

Q And that is for POI-R-O-Y?

A Right. The 235-4070, that is the hot line for them.

Q That is where you call for your dope business, if you have a problem you have to get in touch with them?

A Right.

BY SPECIAL AGENT MILLER:

Q What kind of business are they in other than dope business?

A They run like busing tour, taking care of all these things. Tour bus.

BY CPO BASS:

Q What is the name of the company? Do they have a company? Do they have a company?

A NS Transport.
Q N, like the letter N?
A Right.
Q Transport?
A Right.

BY SPECIAL AGENT BORONYAK:

Q Do they know that you testified against the Americans?

A Yes. But see, they were trying to – when I went back home, see, I was trying to stay away from them for awhile. Thailand is so small, and they know where my parents live and all, so you know how it is over there.

BY CPO BASS:

Q So you were worried about your family and all.

A I wasn't worried about my family so much as my finance. And I just talked to her, I said I'm coming home. I don't want to do anything. I'm scared.

Q So you went back and you got in touch with these people, or did they get in touch with you?

A Well, I didn't get in touch with them after awhile. Then somehow they knew I was around, so I couldn't hide out. So I went to see them instead of having them come looking after me and kill me.

Q So what happened when you went to see them?

A They were just talking, you know, who did you testify, what did you give up, this and that. I just say hey, whatever was in the indictment. I told them everything.

Q So you told them all the cooperation you gave the United States?

A Yes, I told John Gibbons everything.

Q But you told these bosses in Thailand what you did, too, right? You figured they knew, so you went ahead and told them the truth.

A Yeah. But there was one thing I didn't tell them, that because I want to leave something out where I can show them that I wasn't doing all the amount, so they won't kill me. So right now they bought me a passport, they bought me a ticket, they told me to go get the dope, where it is, and all this and that.

Q Don't get ahead of us. So you are in the office, and you tell them what happened, and your cooperation, except

you left out a little part. Then what did they say to you? What did they want you to do?

A Just checked me out for awhile, a couple months, you know.

BY SPECIAL AGENT BORONYAK:

Q How did they do that?

A I don't know how they do it. They just having people following me, or, you know, checking me out, this and that. You know.

BY CPO BASS:

Q Did they give you any money right away?

A Once in awhile when I didn't have any money. Right now my old lady just said that he gave her five thousand bath.

BY SPECIAL AGENT MILLER:

Q How much is that in American money?

A $250. In my apartment to pay the rent.

BY CPO BASS:

Q So they were supporting you while they were checking you out.

A Right.

Q You weren't working over there in Thailand.

A No.

Q Do you have an occupation?

A No. My parents trying to get me one, but I just came back. I wanted to become a monk first, but the season to become a monk doesn't start until July 6th.

Q So after they checked you out, when did they get in touch with you again?

A They just keep getting in touch with me.

Q When was the next time they asked you to do anything illegal? You said they checked you out for a couple months.

A Yeah.

Q Then did they call you up and say we want you to do something for us?

A They didn't have me come into the office.

Q Were they priming you to do something? Did they tell you what was coming up, what they wanted you to do?

A Well, see, I told them – I had to lie to them in order for me to prove that I wasn't doing exactly what they thought

I was doing. So I say, well, I got customers over here, where they said they got dope over here. So they bought me a passport.

Q What name – they had a phony passport, is that what you're saying?

A Yes, this is the one right here.

Q What name is that in? Is that Leelathip? Spell the name that it was in.

A L-E-E-L-A-T-H-I-P.

Q That is the last name.

A Right. First name, S-E-U-R-M.

Q Now, they bought you a phony passport then.

A Right. Expenses, money, airline ticket.

Q How much expense money did they give you?

A They gave me about $1,500, airline ticket.

BY SPECIAL AGENT BORONYAK:

Q When did all this happen? When did they get you the passport?

A About the first of March. Somewhere around there.

Q When they got you the passport, did they tell you what you were going to do then?

A Yeah, they told me what to do.

Q What did they tell you?

A They say go here and then call them back.

Q Go where?

A Go to Chicago. They had me fly to Air France.

Q Did you have anything on you then?

A No.

BY SPECIAL AGENT MILLER:

Q Let me stop one second. Let me just show him something about Chicago and see if it refreshes his recollection. When were you in Chicago? Do you recall the dates?

A I was there three times I think.

Q We found this. Do you recognize that?

A Yeah.

Q What is that?

A That is the Howard Johnson's Motel.

Q Is that where you stayed in Chicago?

A Right. For I think one day.

BY CPO BASS:

Q By yourself?

A Yeah, by myself.

Q Let's go back again now. They told you to come to Chicago in the United States.

A Right.

Q Did they tel you the dope was already here?

A Yeah.

Q And this was heroin, right?

A Right.

Q How did the heroin get here?

A They don't tell me.

Q Do you know how they get it here?

A I don't. It's their business. But I know where I went to pick it up.

Q We will get to that in just a second. So, in other words, they told you heroin is already in Chicago, you go to Chicago.

A Right.

Q Did you go yourself?

A Well, first time I went by myself.

BY SPECIAL AGENT BORONYAK:

Q When was that?

A That is when I landed.

Q When?

A Gee, 15th.

BY CPO BASS:

Q Of?

A March.

Q And you flew from Thailand to where; How did you get here?

A I flew from Thailand to France to Chicago.

BY SPECIAL AGENT BORONYAK:

Q Which airlines?

A Air France.

BY CPO BASS:

Q Then what happened? What were you instructed to do when you arrived in this country?

A Then I went to LA.

Q Did you meet anyone in Chicago?

A No. Not at that time.

Q So you got off the plane in Chicago and then got on a domestic flight for LA.

A Right.

Q Then what?

A Then I just – I mean I stay in a motel. It's called the Chancellor Motel, where I met this guy right here.

BY SPECIAL AGENT BORONYAK:

Q How did you come about meeting him?

A We were sitting in the restaurant eating, and he asked me where I came from. I said I came from Thailand, and we started talking. He said you ought to bring some stuff and make some money.

BY SPECIAL AGENT BORONYAK:

Q What did he tell you his name was?

A He said his name was Al.

Q Is that Al?

A Yeah. And then we broke up. And around 6:00 o'clock we went downstairs, met again, I mean accidentally. So we sat down and talked, and he talking about he used to do some thing with some people in Danberry (phonetically), this and that, and Richmond, Virginia or somewhere. And he said he knew some people.

So I said how would you like to, you know, make some money? The thing was I was trying to show and prove to the guy, these guys in Thailand that I wasn't working with the U.S. Government all the way through.

BY CPO BASS:

Q When they told you to come here, they didn't tell you to meet somebody right away?

A No.

Q You were just supposed to come here and find any buyer for this heroin, is that what you were supposed to do?

A Yeah. See, because during four, five months that I was there I make them believe that when I went to jail I had a connection. You know what I'm trying to say?

Q Right. This is what you told the bosses in Thailand, the people you were working for.

A Right.

BY SPECIAL AGENT BORONYAK:

Q So you came over here, went to Chicago, and went to San Francisco and met Al.

A Los Angeles.

Q You met Al at the Chancellor Hotel.

A Right.

Q Then what happened? Al was talking about doing some business?

A Right. So we drove from Los Angeles to Chicago.

Q In whose car?

A In his car.

Q It was his own car?

A No.

BY SPECIAL AGENT MILLER:

Q Back up one second. When you first met him out in LA, out in Los Angeles, you started talking about heroin dealing, correct?

A Yeah.

Q Did he tell you that he already had heroin, or he was looking to buy heroin?

A No. He didn't say he already had heroin. He said he had people that wanted to buy some.

Q From what point, when you met in LA, correct?

A Right.

Q You guys went to – drove to Chicago?

A He made a lot of phone calls, you know.

BY SPECIAL AGENT BORONYAK:

Q From the hotel?

A Yeah, from the hotel.

Q Do you remember his room number?

A 503.

Q 503? What day were you in Los Angeles?

A Gee, I was there for a week, after the 20th.

Q 20th of March?

A Yeah.

Q After he made the phone calls, what did he tell you?

A He said I think we got something going, you know.

Q Where did he say he had to go?

A I said, well, we have to go to Chicago and pick up

the dope, you know.

Q So then you went back to Chicago.

A Yeah, me and him drove to Chicago.

Q What did you do when you got to Chicago?

A I went to pick up – I called the guy in Thailand, I said I'm in Chicago, and, you know, I got a buyer.

Q Where did you call the guy from? Where were you when you made the call?

A In a pay phone.

Q What pay phone?

A Gee, I don't remember. I'm telling you the truth, you know.

Q When you called the guy in Thailand, what did he tell you?

A He said go pick up a bag, okay? It was a pound and a half in the bag.

Q Where was the bag?

A It was at downtown Chicago. I tell you what, the people in the Counselor, the Thai Counselor up in Chicago was involved in this.

Q The Thai Counselor in Chicago was involved in this thing?

A He is not the Thai Counselor. He works up there.

Q He works with the Thai Counselor?

A Yeah.

Q In Chicago?

A Yeah.

Q What is his name?

A I don't know his name, to tell you the truth.

BY SPECIAL AGENT MILLER:

Q Where did you go to pick up the dope, did you go to the Thai Counselor's office?

A I didn't go to the Thai Counelor's office.

Q Where did you go?

A I went to the building where the Thai Counselor's office is, downstairs in the restaurant.

Q Then what happened?

A Then I – he came down to meet me –

Q Who is he?

A The guy. I don't know him. I never met him before. But I recognize him.

BY SPECIAL AGENT BORONYAK:

Q What does he look like?
A Kind of short.
Q How old?
A Maybe late thirties, something.
Q Is he American or Thai?
A Thai.
Q Does he have a mustache, long hair?
A No, short hair.
Q Dark hair, black hair?
A You know, oriental looking.
Q Does he wear glasses?
A No, he don't wear glasses.
Q Any scars, dental work?
A No.
Q Tattoos?
A He wears suit and ties, you know.
Q Suits and ties.

Okay. You went to the restaurant. How did he know you were down in the restaurant?

A Because the guy – before all this happened, right, I called Thailand before I got into Chicago and said I'm going to be in Chicago, right? Then I give him – he told me to call this guy in Chicago.
Q Do you remember the telephone number?
A You got my briefcase?

COP BASS: I can get it.

MR. VORAVITHAYA: It's in there.

CPO BASS: So he's got the number.

BY SPECIAL AGENT MILLER:

Q When you and Al stayed in the hotel where Al made all these phone calls, what name was he using in the hotel, do you recall? In other words, what name do you think he used to –
A Registered as?
Q Yes, registered as.
A I think Jerry Colfelt.

BY SPECIAL AGENT BORONYAK:

Q What is the first name?
A Jerry.
Q Colfelt?

A Yes.

Q Room 503?

A Right.

Q When you called the guy from the Thailand office in Chicago, what did he say? How did he know who you were?

A Because the guy from Thailand gave him the code name.

Q What was that?

A Payak.

Q Spell it.

A P-A-Y-A-K. Payak. That is my code name.

Q When you called the office, who did you ask for?

A Well, I didn't call him at the office. I called him at his house.

Q Who did you ask for?

A Rayburi.

Q Spell that.

A Well, see, I didn't have to ask for nobody. He answered the phone, and he said who is this? I said this is Payak, and he said where are you from? I said King Dang. That is a code name.

Q Go ahead. How did the conversation go from there?

A And then I told him I will be down there by the restaurant by 3:00 o'clock in the afternoon.

Q What was his name again?

A I don't know his name, you know. Serious business, I swear, I don't know his name. But all I know is I call him up and he answered the phone. I said my name is Payak, and he asked me where you from, I said King Dang. He said okay, come to 35 East Wacker Drive.

Q Spell that.

A W-A-C-K-E-R.

Q So you went there?

A Yeah. And he told me that is a restaurant there, just sit there.

Q You mentioned a name with an L. You start it, it's a long name, when I asked you who you asked for.

BY SPECIAL AGENT MILLER:

Q After you told him your name, did he say what his name was?

A No, he don't say what his name was.

BY CPO BASS:

Q Did you know him by something? Did he have a code name, too?

A Rayburi.

Q That is what we want. Spell that for us.

A R-A-Y-B-U-R-I.

BY SPECIAL AGENT BORONYAK:

Q So you went to the restaurant. Was he there yet, when you got there?

A Yeah.

Q How did you know who he was?

A Well, you know, the guy must have told him what I looked like and all. I was the only oriental.

Q Tell me what happened when you went in.

A I was sitting down there at the counter, and he came down with the package, you know.

Q What was it packaged in?

A It was in white, you know, about like this big, in yellow kind of, you know, those kind of big yellow envelopes.

Q Okay, like a Manila envelope?

A Yeah. You know what I mean.

Q So he sat down. What did he say to you?

A He said, okey, they want – Thailand wanted me to bring back $60,000, and then get the other bag out.

BY SPECIAL AGENT BORONYAK:

Q So he handed you the package and said the people from Thailand wanted $60,000 for what was in that package. How much was in that package?

A A pound and a half.

Q And then what did he say?

A Then he say come back and give him $60,000 and get the other package.

Q What was the other package?

A A pound and a half.

Q Another pound and a half?

A Right. I got a pound left that Al moved. See, Al sold everything.

Q We are getting ahead of each other again.

So you took that pound. Was anything else said between you and the guy in the restaurant?

A No.

Q That was it. He gave you the package and left?

A Yeah, that's all. We not supposed to say anything to each other, because we don't know each other.

Q What did you do when you left? Where did you go?

A I went to, I think it was 6 Pence Inn.

BY CPO BASS:

Q P-E-N-S?

A P-E-N-C-E.

BY SPECIAL AGENT BORONYAK:

Q Where was that located?

A In Chicago, by the airport.

BY CPO BASS:

Q Is that a restaurant or a motel?

A Motel.

See, Al was staying in one room and I was staying in one room.

BY SPECIAL AGENT BORONYAK:

Q What room were you stayin in?

A 239. I'm not so sure.

Q What room was Al staying in?

A Right next door, 231 or 229. He registered. I didn't register.

Q You don't know the name he registered under?

A Colfeit.

Q Was he with you when you went to pick up the pound and a half?

A No, I took a cab.

Q He stayed at the hotel?

A Yeah. I took a cab.

Q Then when did you fly, the next day, or that same day?

A Same day.

Q Same day you left for Newark. What airlines?

A Oh, man, I think United.

BY CPO BASS:

Q Did both of you fly, or one of you?

A Yeah, both.

Q So you left the car where?
A At the airport.

BY SPECIAL AGENT BORONYAK:
Q Do you remember what day it was that you left from Newark?
A I think it was Monday night.
Q What date, do you have any idea?
A Uh-uh. We got in Chicago Monday morning. We left Monday night.

BY CPO BASS:
Q Whose idea was it to fly to Newark?
A Al.
Q Because that is where his people were?
A Yeah. He did time with some people up there.
Q So he said let's go to Newark, that is where he can get rid of the package?
A Yeah, and I know who they are.
Q Did you discuss with him how much money you were going to charge him? What was your business arrangement with Al?
A I told him we wanted $80,000 a pound, you know.
Q A pound, or pound and a half?
A A pound. And we split the difference see; because the guy wants $50,000 in Thailand.
Q I thought you said 60,000.
A They wanted 60,000 for the package, but the people in Thailand want $50,000 a pound.

BY SPECIAL AGENT BORONYAK:
Q When you got to Newark, what did you do?
A We stay at the Holiday Inn.
Q Which one?
A Gee –
Q Was it near the airport?
A No.

BY CPO BASS:
Q Downtown?
A No.
Q Was it in the suburbs?

A I don't really know. I don't know Newark.

BY SPECIAL AGENT BORONYAK:

Q When you got to the Holiday Inn, do you remember the room number there?

A No.

Q What did you do when you got to the Holiday Inn?

A Al made some phone call and had some people come over and give them some samples, you know.

Q How many people?

A Two guys came.

Q Who were they, do you remember?

A Yeah. One was – what is his name? They call him Poli.

Q Spell it.

A P-O-L-I. Phone number 541-7457.

Q So Poli came over?

A Uh-huh.

Q Who else? Did he come with someone else?

A He didn't come with someone else.

Q When he came over, what happened?

A Al gave him some samples. We gave him some samples.

Q How much?

A I don't know how much. Just a little bit. It was in a bag. And they said they liked it. They came back and they said they liked it, this and that, they wanted the whole thing.

Q Did they buy the whole thing?

A They gave us $60,000, right, so I went back to Chicago and gave the guy $60,000.

Q Poli bought the package for 60,000?

A No, he bought the package for 120,000, pound and a half.

Q So did the deal go down at the Holiday Inn in Newark? Is that where he bought it?

A Yeah.

Q While you were at the Holiday Inn?

A Yeah.

Q That night?

A It wasn't that night. It was two or three nights later. See, he didn't give us all the whole money. He gave us $60,000 at first, but we let him have the whole package, you

know. And the balance that was in my suitcase, that was the balance. Not the whole balance. I mean I had to split it with him. I had about eight, $900 of my own in my little briefcase, because all the money that was supposed to go to them is all packed in the big suitcase.

BY CPO BASS:

Q How much is in your suitcase right now?

A About forty, $50,000. But I have loose money of my own that is in the little small briefcase.

BY SPECIAL AGENT BORONYAK:

Q So he came to the hotel with 60,000. Who did he give the money to?

A He laid it out on the bed.

Q Who counted the money?

A I did.

Q Who gave the guy the heroin?

A I did.

Q What was Al doing when all this happened, was taking place?

A He was just sitting there.

Q Sitting there?

A Yeah.

Q Did Al introduce the guy to you?

A Yeah.

Q When you gave him the sample – who gave Pcli the sample?

A Al did.

Q He took it from the pound and a half?

A Yeah.

Q And gave it to him?

A Well, I opened up the package, you know. I guess we both did, you know.

Q When you gave the guy the sample, that was the first night you were in Newark?

A Yeah, that was the first night in Newark.

Q Then he came back two or three days later?

A He came back to see us every day.

Q But he came back with the 60,000 two or three days later?

A Yeah.

Q Did he always come alone?

A No, he came with another guy, George. That's all I know, George.

Q Can you describe George?

A Big, heavy, with a beard.

BY SPECIAL AGENT MILLER:

Q White or black guy?

A American, Caucasian.

BY SPECIAL AGENT BORONYAK:

Q About how old?

A Gee . . .

Q He had a mustache, too?

A Do you want to get that little thing?

BY CPO BASS:

Q Your phone number book? It was in a brown folder you were carrying?

A Yeah. Get the whole thing.

BY SPECIAL AGENT BORONYAK:

Q Poli, what does he look like?

A Kind of short, Italian.

Q Black hair?

A His old lady's name was Joanie. Patrick, that is the last name.

BY SPECIAL AGENT MILLER:

Q I want to show you some figures and stuff. This was taken out of the room. Did you guys write these figures down when all this was taking place? Did you write any figures down?

A Let me see.

SPECIAL AGENT BORONYAK: We are not in Baltimore yet.

SPECIAL AGENT MILLER: Okay. When we get to Baltimore we will go through this.

SPECIAL AGENT BORONYAK: We are in New Jersey, we are in Newark.

BY SPECIAL AGENT BORONYAK:

Q We will look at that later.

So Poli came, gave you the 60,000, you gave him the pound and a half. Was his wife there?

A No.

Q How did you meet his wife?

A At the hosue. We went to dinner at the house.

Q But the deal with the 60,000 went down in the room?

A Yeah.

Q Did his wife know what was going on?

A Do I have to go testify to all this?

BY CPO BASS:

Q Is this the book you are talking about?

A No. It's a calculator book.

Q I saw the calculator. You want the thing with the calculator?

A Yeah, the whole thing.

Q This is no good as far as asking you questions?

A No, that is just airline things.

BY SPECIAL AGENT BORONYAK:

Q That I can't answer for you, because you should have talked about that with the U.S. Attorney.

A See, because if I don't have to go testify, my old lady gets here, I can get you the whole operation.

Q Well, we will work on that at a later time about you testifying. I can't promise that you won't.

A Because if I don't, now from what I'm telling you, you guys got a lead on everybody that is doing this and doing that. You guys can cover them.

Q I can't promise to you that you won't.

A I don't want to testify. I mean I would appreciate it, you know.

Q If we could keep you out of it, right?

A Yeah. Because if I help you guys out getting this operation down, through the Thai Counselor and all, all I'm asking you to do for me is get me and my old lady to England.

Q That will have to be worked out with the United States Attorney.

A Cobb?

Q Yeah, right.

A And I will be safe in England, because my old lady –

Q That will all be worked out with Ty Cobb. Did she know what was happening?

A I don't think so.

Q So when you leave to take the 60,000 back to Chicago?

A here you go.

541-7457. That is the home phone number.

Q Patrick, that is his last name?

A Yeah, Paoli.

Q 541-7457.

A Okay. Here is the counselor. Thai Counselor in Chicago. 236-2447.

Q Is that his name?

A No, that is my friend.

Q You just wrote this number on here.

A Yeah.

BY CPO BASS:

Q That was the number at the counselor's office, or that was his home number?

A That is the office number. The home number is 769-4763.

Q That was also a Chicago number, right?

A Yeah, that is his house.

Q Do you know what he did for the Counselor's office? Do you know what his job was there?

A I have no idea, sir.

Q You don't know what his real name is?

A I never met him. All I know is this is what I was supposed to do.

Q But you would know him if you saw him again.

A Yeah, I would know him if I saw him again.

BY SPECIAL AGENT BORONYAK:

Q So you left the next day, after you sold the pound and a half to Poli.

A Right.

Q To go to Chicago.

A Right.

Q Who went to Chicago?

A Me.

Q Where did Al go?

A He stayed in Newark.

Q When you went to Chicago, what did you do when you got there?

A I call him at the house.

Q The Counselor?

A Well, not at the office. At the house.

Q You called him at the house.

A I said I will call you when I get to the restaurant. Then I call him at the restaurant, I said, you know, this is me, and I'm downstairs. So he came downstairs. I gave him the $60,000. Then he gave me the other package.

Q Another package, in another envelope?

A Yeah.

Q With a pound and a half in it?

A Right. And the half a pound Poli got. The pound is right here. Al was supposed to move it. I don't know who he goes through.

Q Well, he gave you another pound and a half, you gave him $60,000. Then what did you do, go back to Newark?

A Say that again.

Q After you picked up the second package –

A Yeah, I went back to Newark.

Q You went back to Newark that same day?

A No. I stayed at the Howard Johnson's for one night.

Q Then you went the next day?

A Yes, I went the next day.

Q So that would be roughly –

A Sunday I left.

Q According to this receipt from Howard Johnson's, you left on April the 14th.

A Right.

Q Townhouse?

A (Nodded his head.) Townhouse Hotel.

You guys sure you got a safe place for me tonight?

Q Yes. You won't be without.

A But I'll be in jail though.

CPO BASS: You will be in jail.

SPECIAL AGENT MILLER: We can't put you in a better place.

CPO BASS: This is a bad day. It's a weekend coming up, and today is Good Friday. Had it been another day

we probably could have worked something out for you. But you will just be there for the weekend, and Monday we will make arrangements for you.

MR. VORAVITHAYA: Will they let me have my personal things, like toothbrush and all?

CPO BASS: Personal things you won't have any problem with.

MR. VORAVITHAYA: Are they pretty nice?

CPO BASS: It's one of the better jails.

MR. VORAVITHAYA: County Jail, man.

CPO BASS: City Jail is much, much worse. This is a lot nicer. That is why we are sending you there.

MR. VORAVITHAYA: But Monday you guys should move me someplace else.

CPO BASS: Monday we will make other arrangements for you.

MR. VORAVITHAYA: Because I get cold. They don't get no blankets and all. I appreciate it if you guys treat me –

CPO BASS: We understand.

MR. VORAVITHAYA: I appreciate it, you know.

SPECIAL AGENT BORONYAK: We will do the best we can.

MR. VORAVITHAYA: Please. I mean as bad as I am right now, you know.

BY SPECIAL AGENT BORONYAK:

Q You got back to Newark. You went to the Townhouse Motel.

A Right.

Q You met Al there?

A Yeah.

Q Then what happened?

A Then I told him I got the package. Then he got in touch with Poli or someone. He go about doing his business.

Then Poli came by and gave us – I think it was fifty some thousand dollars. That was in the suitcase.

Q That is what is in your suitcase.

BY CPO BASS:

Q $30,000?

A $50,000. Fifty some thousand. That was in the suitcase. Then he took another half a pound. That is why there is

only a pound left.

BY SPECIAL AGENT BORONYAK:

Q He took a half a pound. So then he owes you more money.

A Yeah.

Q How much more does he owe you?

A He owes me 40,000 more.

BY CPO BASS:

Q Plus he owes you 10,000 from the first –

A That's already paid off.

Q You said sixty and fifty. Didn't you say –

A He paid 56 – 54 – 64 and 56.

Q 54 the first time.

A 64 the first time.

Q 64 the first time.

A Right, and 56 the second time.

Q So you got all your money.

A Right.

BY SPECIAL AGENT BORONYAK:

Q That was for the pound and a half.

A That was for the first packet.

Q When Poli – did he pick up the package at the Townhouse Hotel?

A Yeah.

Q Who came –

A He came with George.

Q He came with George?

A Yeah.

Q When he came into the room, who did he give the money to?

A He just laid it on the table, on the bed.

Q Who gave him the heroin?

A Al. Al weighed it out. They got the scale.

Q What did George do?

A George was the one that took the dope.

Q He picked up the dope?

A Yeah, he picked up the dope.

Q But Poli laid the money on the bed.

A George did.

Q George laid the money on the bed?

A Yeah.
Q What did Poli do during the whole thing?
A He was just sitting there.
Q Who is George? Do you know anything else about George?
A He is supposed to be Poli's partner.
Q You don't know his last name?
A No.
Q You don't know his phone number?
A No.
Q Did you ever see his car?
A They drive a big old truck.
Q An old truck?
A Yeah, panel truck type thing, green.
Q Green?
A Yeah.
Q Would you say it was old or new?
A Old, real old.
Q Beat up?
A Oh, you know, I don't know if it was beat up or not.
Q It was just the two of them in it? Was there anybody else outside waiting on them?
A No, there was only two of them.
Q Did they say they were from Newark? Do you know that is where they lived?
A Yeah, they lived in Newark.

BY SPECIAL AGENT BORONYAK:
Q So after they bought what it was, an extra half a pound?
A Yeah.
Q It was weighed out?
A Yeah.
Q Then what happened?
A They were supposed to pay Al back that $40,000.

BY CPO BASS:
Q When? When were they supposed to pay him?
A Next week, or they can pay me.
Q So they still owe you that money.
A Yeah.
Q How were they supposed to get in touch with you or you with them;

A Al was supposed to get in touch with them.
Q He is supposed to call them?
A Yeah.

BY SPECIAL AGENT BORONYAK:
Q Then what did you do?
A Then Al got a call, he called here to some of his friends here.

BY CPO BASS:
Q Where? In Maryland?
A Yeah.
Q In Baltimore?
A In Baltimore, yeah. Well, he came, I think he came Sunday or Monday, he came one time with a sample.
Q This week?
A Yeah mean not right now, but, you know, like last Sunday. With sample. I think his name was Gary. He went to see Gary.

BY SPECIAL AGENT BORONYAK:
Q Is that this guy here?
A No, that is my friend. I used to work with him.
Q And Al came to Baltimore by himself?
A Yeah.
Q How much of a sample did he bring?
A Just a little bit.

BY CPO BASS:
Q That was for Gary or Jerry?
A I think it was Gary.

BY SPECIAL AGENT BORONYAK:
Q When was that, last Sunday you said?
A Yeah.
Q What did you do when Al came to Baltimore?
A I stayed.
Q You stayed at the Townhouse?
A Yeah.
Q Did Al come back to Newark?
A Yeah, the following day. He spent the night here.

BY CPO BASS:

Q How did he get back and forth, fly?

A Yeah.

Q His car is still in Chicago?

A Yeah, his car is still in Chicago. His car is in Chicago.

Q Thinking back to Chicago for a minute, when you got the heroin from the guy in the restaurant, did Al take you and pick you up, or did you take a bus or a taxi? How did you do that?

A I took a taxi. Al never went with me.

Q But from the motel that you were staying, you took the car to the airport, right, and left the car –

A Me and Al did, yeah.

Q You took the heroin, got in the car and went to the airport.

A Right.

BY SPECIAL AGENT BORONYAK:

Q When Al came back from Newark, what did he tell you?

A He said the guy liked it, and they wanted the whole package, this and that. Al said, well, Poli wants a half. So there's a pound left. So he made a phone call to Gary here, you know. He said to come on down here, so we came down here.

Q When did you come down to Baltimore?

A The day before yesterday.

Q The day before yesterday?

A Yeah.

Q That would have been the 7th? Today is Friday. It would have been Wednesday you came to Baltimore?

A I don't know.

Q You came the day before yesterday.

A Yeah, the day before yesterday we came.

Q You flew in from Newark?

A Yeah.

Q Did you go to the Holiday Inn downtown here on Lombard Street?

A Yeah.

Q Right from the airport?

A Right, we took the cab.

Q What did you do once you got to the Holiday Inn?

A Al checked into the hotel and got two adjoining rooms.

Q What were the numbers, do you remember?

A 233 and 231.

Q 321?

A Yeah, 323 and 321.

BY SPECIAL AGENT MILLER:

Q What airlines did you fly down from Newark on?

A We didn't fly from Newark. We flew out of LaGuardia.

Q Does this look familiar to you?

A Yeah.

Q Is that the flight you took out of LaGuardia?

A Yeah.

Q Flight 179?

A U.S. Air.

Q New York Air?

A New York Air.

BY SPECIAL AGENT BORONYAK:

Q When you got checked into your rooms, what did you do Wednesday night?

A I didn't do nothing.

Q You stayed in your room?

A Yeah.

BY CPO BASS:

Q Did anybody come see you?

A Well, me, I stayed in the other room.

BY SPECIAL AGENT MILLER:

Q What room did you stay in?

A 233.

Q 323?

A 323.

Q And Al stayed in 321?

A Right.

(An unidentified agent entered the room and asked the following question:)

A VOICE: Is this what you picked up in Chicago that you spoke of earlier?

MR. VORAVITHAYA: No, this ain't it.

SPECIAL AGENT MILLER: That is not it?

BY CPO BASS:

Q Was it like that?

A Yeah, it's like this.

Q Bigger, smaller, exactly the same?

A Something like this, but it has a thing on it.

Q A little clip to clip it shut?

A Yeah.

BY SPECIAL AGENT BORONYAK:

Q While you were at the Holiday Inn, did Al contact Gary at all;

A I have no idea, because I'm in the other room.

BY CPO BASS:

Q You two didn't stay together most of the time? You weren't friendly?

A Well, see, he does his thing, and all I do is I stay in my room, you know. He tole me, he said let me take care of this end.

Q So what happened? What is the next thing that you know that happened?

A The next thing I knew happened was the guy came over yesterday.

Q Who was he?

A A guy by the name of Gary.

Q Gary?

A Yeah.

BY SPECIAL AGENT BORONYAK:

Q What time did he come over?

A I don't know.

BY CPO BASS:

Q Late, early morning, afternoon?

A No. About 8:00 o'clock.

Q P.M., 8:00 at night?

A Yeah.

BY SPECIAL AGENT BORONYAK:

Q What did Gary look like?

A I didn't see him.

Q Did he come to Al's room?

A He came to Al's room.

Q Then what happened?

A Al told me to run a test on it, all this and that. They liked it. They wanted the whole thing.

Gary told – Al told me, he said the guy, I don't know his name, Jim or somebody, I don't really know, they call Al back midnight last night and said they are going to pick it up at 9:00 o'clock this morning.

Q Well, did Al say the guy tested it?

A Yeah.

Q How did he test it?

A He ran it through the chemical thing I think.

Q Did Al have the package? Where was the package?

A Yeah, Al had the package.

BY CPO BASS:

Q You gave him the whole package?

A Yeah, Al had the package. See, Al had the package, and then before we left the room today, the guy called Al's room and said what happened? Al said, well, he didn't show up. And Gary said, get out.

So he gave the package back, and I put it back in my suitcase.

Q Why didn't the guy show up?

A I have no idea.

Q So why were you leaving, because the phone call of this guy on the phone told you to leave?

A The guy by the name of Gary called Al in his room and said get the hell out.

BY SPECIAL AGENT BORONYAK:

Q This morning?

A Yeah, just when we was walking down.

BY CPO BASS:

Q Why get the hell out?

A Because the guy didn't show up.

Q So where were you going?

A I don't know. To tell the truth, I don't know where I was going.

Q Did you think something was wrong?

A Well, I didn't think anything was wrong, because, see, I had no idea what is happening, because Al is taking care of this thing, you know.

BY SPECIAL AGENT MILLER:

Q Is this your handwriting, all this stuff here?

A No.

Q Is this Al's?

A I don't know whose handwriting it is. It's not mine. It's not mine at all.

BY CPO BASS:

Q Whose radios were they?

A The little one, walkie talkie?

Q Yes.

A Al.

Q What were they for?

A I was in the next room, and he was in the next room –

Q He never told you what he bought them for?

A He said, well – I mean he said when the guy comes in, when Gary comes in turn it on, and then he will talk, and I can hear what is going on. That is what he bought it for.

BY SPECIAL AGENT BORONYAK:

Q Did Al tell you who called this morning and told you to get out?

A Gary. That is what he said, Gary.

Q That was right before you guys checked out?

A Yeah. And then he said get the hell out, so we got out.

Q He didn't say why get the hell out?

A No.

BY CPO BASS:

Q Whose marijuana was that in the desk drawer?

A It was Al's, but it was in my room, because last night I was smoking it.

Q Where did that come from?

A From Poli.

Q From Poli?

A Yeah, in New York.

Q What else did Poli give you?

A He didn't give me nothing.

Q Just the dope, just the grass?

A Yeah.

Q How much grass did he give you, just what was there?

A Yeah, right there. I mean I don't like to smoke. I don't like to do any dope. I'm not a dope man, you know.

See, what I'm doing is, because providing for them not to kill me and my old days at home, because of what I did in 1979, 1980, in California with John Gibbons, see. And then I did time, you know, and I told them I met some people, this and that, and I wanted to show them I wasn't . . .

Q Do you call and check in with people in Thailand from time to time?

A With them guys?

Q Yes.

A Well, once in a while I'll call. But most of the time I'll call my old lady or call my mom.

Q Have you called the bosses over there recently, any of these people you named to us?

A No.

Q When is the last time you talked to any of them?

A I think it was about a week ago, when I went back to Chicago.

Q Now, when you go to Chicago, if you wanted more than a pound and a half, could you get more than a pound and a half?

A Right now?

Q Yeah.

A Not right now. Maybe next week.

Q Why not now? Is none left?

A There is none left right now.

Q What is happening next week?

A See, they got a schedule going. All I know is like they can ship like two packages, four packages every Friday or every other Friday.

Q Two to four packages every other Friday?

A Right.

BY SPECIAL AGENT BORONYAK:

Q How much is in a package when they ship it?

A A pou[illegible]d a half. See, that is why I don't want them to know that I [illegible] with you guys.

BY CPO BASS:

Q I understand.

A So I want you guys to get the whole thing so I can clear myself and let you know that I'm 100 per cent with you.

Q They ship two to four packages every other Friday or every Friday?

A Well, they ship it out of Thailand on Friday, and it will

get into Chicago either Monday or Wednesday.

Q How does it get there?

A Hell if I know.

Q No idea?

A Diplomat.

Q Do you think –

A Yeah, it goes to the counsel.

Q You're sure that the diplomat brings it?

A I'm positive.

Q In his pouch?

A I don't know where. It goes to the Thai Counselor.

BY SPECIAL AGENT BORONYAK:

Q What makes you sure that it is coming by way of diplomats?

A Because I picked it up from the thing, from the Thai Counselor thing.

BY CPO BASS:

Q Have you ever seen these people in Thailand talk to any diplomats?

A No.

Q Have they ever mentioned any diplomat's name that worked for them?

A Well, the nickname is Ding.

Q Ding. D-I-N-G?

A Ding. He is the one that is doing the shipping. He works in the Foreign Department.

Q In Thailand or here?

A In Thailand.

Q For the embassy? Like the foreign office?

A Yeah.

Q She he works for the Government.

A Yeah, he works for the Government.

Q Does he carry it himself, or he puts it in the pouch?

A He sent it, mailed it.

Q In the mail. He doesn't put it in the bag and then bring the bag over here.

A No.

Q What, does it come by airplane?

A I would imagine so.

Q And that is on Friday. He puts it in the pouch on Friday, puts it on the plane, and when does it get to Chicago?

A Either Monday or Tuesday. See now, if this package here move and they get their money I can have, I told them -- I can tell them, hey, they want four more packages.

Q So that will be six pounds.

A That will be six pounds.

Q You can get another six pounds.

A Or six packages.

Q You can get as many as six packages?

A Right.

Q That is the most you can ask for, six?

A Between two to six.

BY SPECIAL AGENT BORONYAK:

Q How do you know it is sent here to the counselor? Are you sure of that?

A I'm pretty sure, because I went to pick it up there. See, because when I got to the 35 East Wacker Drive, right?

Q Yes.

A I called up to the offices, and they said this is the Royal Thai Counselor.

SPECIAL AGENT McCORMACK: Let's go off the record.

(Whereupon, a discussion was held off the record.)

MR. VORAVITHAYA: I don't know how much you trust me, okay? Now, if you are willing to trust me enough, okay, the pound that I got right now, and the money on the balance, we give it to them in Thailand. You see what I'm saying?

BY SPECIAL AGENT McCORMACK:

Q Go on. Whether we can do it or not is another matter.

A We will give it to them. We can work it like this.

Q Is there any way that we could give it to the representative at the embassy?

A I can try.

Q You see, because you don't want to go back, get another shipment here.

A Yeah, I can try. Or I can try the other way. I can try where I have my old lady here, take the money back, right?

Q Yeah.

A And then she gets back here.

Q Have we gone into what organization you are dealing with in Thailand?

SPECIAL AGENT BORONYAK: Briefly, at the beginning.

BY SPECIAL AGENT McCORMACK:

Q Why don't we run down who your home organization is in Thailand, and what kind of volume they are doing.

A They are doing, you know.

Q Who is in charge? Who is the head man?

A They got the name.

Q Say it again for my benefit.

A You better off reading it.

Q Do they have access to a heroin laboratory?

A No. But they have access to buying bunches.

Q What kid of weight are they doing in Thailand?

A They can do anything they want.

Q For instance.

A They can buy like up to, you know, ten kilos, twenty kilos.

Q Who is the diplomat that you have arrangements with?

A He is not – he works in there. He is the one that is doing the shipping.

Q He is the one doing the shipping. And he is the one that you meet to pick up the dove.

A In Chicago?

Q Yeah.

A Yeah.

Q What is his name?

A I don't know his name. See, they don't tell me. But I will recognize him. If you want me to, you know, you can have ten people with me, and we will go to Chicago, and I will sit down there and talk with him, and you know who he is.

SPECIAL AGENT BORONYAK: We have his home phone number.

SPECIAL AGENT McCORMACK: Super.

CPO BASS: Off the record.

(Whereupon, a discussion was held off the record.)

BY CPO BASS:

Q You don't owe Chicago any money right now, right; The only money owed – or do you owe them money?

A I don't owe Chicago any money.

CPO BASS: Poli, the guy that bought from him in Newark, owes him $40,000 for a half pound that they sold

him out of this pound and a half.

BY CPO BASS:

Q Are you saying that you could make a call, that you have Poli's number?

A Here is my finance's name. Did I spell it right?

Q Yes.

A You sure?

Q Yes.

A Okay.

Q So you are saying that you could call Poli and you could say, hey, I'm ready to come get the money. Is that what you're saying?

A What about Al, is he going to call them?

Q Al ain't calling nobody right now. What I am saying is would there be any problems with you calling Poli?

A No.

Q That wouldn't look unusual for you to call and say, hey, I want the money?

A No.

Q Would you have to go to Newark, or did you think he would come down here to pay you, or meet you halfway, or what?

A I probably would have to go up there. You guys can go with me, because I'm willing to work with you 100 per cent.

BY SPECIAL AGENT McCORMACK:

Q How much does Poli owe you?

A Forty.

Q $40,000?

A Yeah.

BY CPO BASS:

Q You are all square with Chicago and with Bangkok, you don't owe them any money?

A I owe them money.

Q How much do you owe them?

A 60,000 more.

Q For this last pound and a half, for what is in the suitcase and the half that Poli got.

A Right.

Q Who do you owe that to, the guy in Chicago?

A No, the guy in the paper.

Q The guys over in –

A Right.

SPECIAL AGENT McCORMACK: The Bangkok people.

MR. VORAVITHAYA: Right.

BY CPO BASS:

Q But you would deliver the money to Chicago.

BY SPECIAL AGENT McCORMACK:

Q You were going back to Thailand.

A The thing of it is that they don't want Chicago to know how much they were getting. You see what I'm saying?

BY CPO BASS:

Q Yeah.

So you were planning on going back to Thailand?

A Yeah.

Q Taking back the last sixty grand.

A Right, and give it to them so they can trust me, you know, they don't have to kill me and my wife. You see what I'm saying?

Q Yes.

A That is what John was all pissed off. I said, John, they are going to kill me and my wife. What the hell? He said why don't you drop a dime on me. Mr. John Gibbons in San Francisco.

Q Do these people in Thailand, are they involved with any police or Government officials over there? Are they very powerful?

A (Shook his head).

We can get them just like that (witness snapped his fingers.)

Q Do you know where they got the heroin from in Thailand? Where did these four people that you named to me, Charlie –

A I think I know where they got them from. Some. Not all of them. Some. But I don't know, you know – I know their faces.

Q Was it –

A See, because I owe them some money. That is why they send me.

Q You owe who some money?

A These guys.

Q The ones that you are working for.

A Yeah. I owe them some money, and I owe my life to them.

Q Do you ever see any of the labs where they refine the heroin?

A No.

Q And the only way that you know they are bringing it in is in the mail, diplomatic mail.

A Right. And it goes to Chicago.

There is no way you can put me somewhere, I mean, without having to put me in jail tonight?

Q Not for the weekend. If we could, we would.

A I would appreciate it. I would even pay my way.

Q That is not the problem.

A I would have three or four of you stay with me.

Q That is not the problem. The problem is that we need permission to do that, and we can't get it, because it is Friday afternoon, and it is a holiday. But Monday we will have all that taken care of.

A It will be in no jail, right?

Q I mean we will make the best accommodations for you we can. I can't make any promise right now. But I can promise you they will try and make --

A Once my old lady gets here I can stay with her, right?

A That's up to the boss to decide. What did he tell you?

SPECIAL AGENT BORONYAK: That will all be decided Monday. That is why we can't give you these answers today, we don't know the answers.

MR. VORAVITHAYA: I'm willing to work with you.

BY CPO BASS:

Q We understand. the main thing we are trying to do is right now getting your fiance out of Thailand for you. That is the most important thing. You think her life might be in danger, we will get her out of there for you.

A Right. And another thing, I don't want them to know that I am --

Q We don't want them to know either. We agree. We feel the same way.

A We can get this whole thing taken care of, you know.

BY SPECIAL AGENT BORONYAK:

Q Let me ask you some questions here, Boon. You address?

A That is wrong.

Q What is your real address?

A 60/1 – you want me to writ it down for you so you can copy it? It will be better that way I think.

CPO BASS: Can you spell it?

BY SPECIAL AGENT BORONYAK:

Q We want to put it on the stenographer's tape.

A 60/1 S-O-I, N-A-U-L, N-O-I, E-K-A-M-A-I, Bangkok, eleven, Thailand. Telephone number, 391-1297.

BY CPO BASS:

Q If you would, because in the beginning I didn't quite get it. Spell your name for me again, your real name.

A B-O-O-N-Y-A-R-I-T.

Q And your last name?

A V-O-R-A-V-I-T-H-A-Y-A.

BY SPECIAL AGENT BORONYAT:

Q What is your real date of birth?

A 2/8/54.

Q Where were you born?

A Bangkok, Thailand.

Q You are a citizen of Thailand now?

A (Nodded his head.)

Q And you are five feet six, 130 pounds?

A Maybe 125, somewhere around there.

Q Do you have a real passport, a valid passport I mean?

A They got them over there in the ninth circuit, in San Francisco.

Q Do you happen to know the number by any chance?

A No. John Gibbons can get it.

Q What name is on –

A My real name. My real name is on that passport, and the green card.

Q What is your wife's name?

A She is not my wife yet.

Q Fiance. What is her name?

(Mr. Voravithaya showed Special Agent Boronyak a card.)

SPECIAL AGENT BORONYAK: T-I-P-A-V-A-N, last name of P-R-A-S-E-R-T-A-D-I-S-O-R-N.

BY SPECIAL AGENT BORONYAK:

Q What is her address?
A Gee, you can write to her at my house.
Q You don't know her address?
What is her phone number?
A That is her phone number there.
Q Which one?
A 511-2172.
There is where I can leave the message, you know.
Q What is your father's real name?
A That is real name. That is real name.
Q J-A-V-A-L-I-T?
A Right.
Q And last name, L-E-E –
A No. Last name is my last name, V-O-R-A –
Q This is wrong here then.
A Right.
Q What is your mother's real name?
A That right there (indicating).
Q First name of S-U-C-H-I-T?
A Right.
Q And last name of V-O-R-A-V-I-T-H-A-Y-A?
A (Witness nodded his head.)
Q Do you have any brothers or sisters?
A One sister.
Q What is her name?
A Nittaporn, N-I-T-T-A-P-O-R-N.
Q How do you spell the last name?
A V-O-R-A-V-I-T-H-A-Y-A.

BY SPECIAL AGENT MILLER:

Q Let me ask you this. When Gary was in the room with Al, what room was he in, was he in 323?
A 321.

BY CPO BASS:

Q And you never saw Gary?
A No.
Q You never talked to Gary?

A No.
Q You don't have a phone number for Gary?
A No.

BY SPECIAL AGENT BORONYAK:
Q Do you have a criminal record in Thailand?
A Do I?
Q Yes.
A No.

BY CPO BASS:
Q Is your fiance involved in any of this at all?
A (Shook his head.)
Q She knows what you do, though?
A Well, half and half, you know. I mean she don't know exactly what I'm doing. All she knows is that I am coming up here to pick up some money.

BY SPECIAL AGENT MILLER:
Q How much do you get out of this? What do you make when you deliver a package and pick it up?
A Two packages I make about $40,000.
Q Off two packages. One package is what, a pound and a half?
A Yeah.

BY CPO BASS:
Q So you make $20,000 for a pound and a half you sell.
A Yeah.

BY SPECIAL AGENT BORONYAK:
Q Do you know what percentage of heroin that is in the pound and a half that you are getting?
A Ninety some. It's pure.
Is it pure?
SPECIAL AGENT MILLER: I don't know.
MR. VORAVITHAYA: It's pure. It's supposed to be.

BY SPECIAL AGENT BORONYAK:
Q Is that what the people in Thailand told you?
A Yeah.

BY SPECIAL AGENT MILLER:

Q Where do they get it in Thailand, do you know?

SPECIAL AGENT BORONYAK: We already covered that.

MR. VORAVITHAYA: If I know, I would tell you. But I know some faces where they got it from, but I don't know the name.

BY SPECIAL AGENT BORONYAK:

Q Okay, Boon. For the last approximately hour and a half we have been sitting here asking questions myself, Agent Richard –

A Can I call you by first name?

Q Yes.

A Richard.

SPECIAL AGENT MILLER: Keith.

BY SPECIAL AGENT BORONYAK:

Q Myself, I am Richard Boronyak with Drug Enforcement Administration; that is Keith Miller with Drug Enforcement Administration, and the other person present is Dennis Bass from U.S. Customs. We have asked you quite a few questions that you agreed to answer under oath, and we have had the stenographer, Joe Grabowski, take them down.

What we would like you to do is just – you have noticed Mr. Grabowski here typing on this, what is called a stenographer's machine. Are you familiar with those?

A Yeah.

Q To our eye we won't be able to ready anything there.

A Yeah. You got to go to the defendant's lawyer, right?

Q No.

A When he goes to court, that goes there, don't it?

Q No.

This tape was made – he is doing this to take notes, because he can write on that machine a lot faster than we can.

A See, because what I'm trying to tell you guys is I don't want nobody to know outside this building that I am busted, because I want to work with you. See, they got a guy in LA that is doing the same thing as I am doing. Never went to jail. They got a whole lot of people. Gary Fout and Dave, a Chinaman, Chinese guy.

SPECIAL AGENT MILLER: Dave? I know him.

MR. VORAVITHAYA: He got a guy in there that didn't do no time. He went out and got all kinds of operations, you know. But he stays in this country.

BY SPECIAL AGENT BORONYAK:

Q In LA?

A I don't know where. But I know who he is.

Q What is his name?

A His name is –

Q Spell it.

A Gee. I want it to be like this. I want to be safe in this country. If not, if I can clear this thing out for you guys, all you guys do for me is send me and my old lady back to England, I'll be safe. That's all I'm asking for. But I'll clear it up for you.

BY SPECIAL AGENT BORONYAK:

Q Getting back to what I was saying. You have noticed that whatever we have said has been taken down on the machine here.

What we would like you to do is we know you can't read what is on that tape, and I can't read what is on the tape. But at the end of the tape, when the stenographer signs it off, the time and the date and everything else, we would like you to sign the tape as that being the tape that you watched him punch all those little holes in. Would you do that?

A Yeah.

SPECIAL AGENT BORONYAK: So we can end this interview at 3:55 p.m. today.

(Testimony concluded at 3:55 p.m..)

(Boonyarit Voravithaya signed his name, date and time on the reporter's note paper under the last outline written by the reporter.)

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings were held as herein appears, and that this is the original transcript thereof for the file of counsel.

I certify that the examination was recorded stenographically by me and then transcribed from my stenographic notes to the within typewritten matter in a true and accurate manner.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and seal this 15th day of April, 1982.

Notary Public (Seal)

Exhibit A - GC-82-0026
4/9/82
SGC-82-0026 to Paul PRIMIANO PAULEY PATRICK

GOVERNMENT'S EXHIBIT NO. 11(b)
CASE NO. R-81-00178
IDENTIFICATION: JUL 29, 1982

(ringing)

PAUL:	Hello
SGC-82-0019:	Hello
PAUL:	Hello
SGC-82-0019:	Is Pauley there
PAUL:	Yeah
SGC-82-0029:	Is this Pauley
PAUL:	yeah
SGC-82-0019:	Its me Lee
PAUL:	Whats up buddy
SGC-82-0019:	Whats up
PAUL:	Not much, what are you doing?
SGC-82-0019:	Huh
PAUL:	What are you doing?
SGC-82-0019:	Not a whole lot, Al, Al went out to take care of some business
PAUL:	Yeah
SGC-82-0019:	I don't think the shit went through you know
PAUL:	Yeah
SGC-82-0019:	Yeah, they all fuck around up here you know what I mean
PAUL:	You wanta play you gotta pay
SGC-82-0019:	Yeah but you know I I want to come up your way man.
PAUL:	Alright
SGC-82-0019:	You know, what, can you but I got to go home, you think you can give me back the balance on the forty
PAUL:	That won't be till at least Monday
SGC-82-0019:	At least Monday
PAUL	Yeah you got to give me at least a week man, you know
SGC-82-0019:	You mean you mean ah
PAUL:	Yeah
SGC-82-0019:	What this coming Monday
PAUL:	Yeah
SGC-82-0019:	See cause if I can if you can give me by this weekend then I can let you have I can you

know

PAUL Alright, alright, lets talk about that over here.

SGC-82-0019: Yeah

PAUL: Let me see what I can do, tell him to give me a call Monday.

SGC-82-0019: Uh what you want you want to meet me, I I can come up your way today

PAUL: Yeah, I'm gonna do a little running around tonight

SGC-82-0019: You gotta do running around tonight

PAUL: I got to

SGC-82-0019: Cause I can come up over there you know, I I can come up by seven o'clock tonight over there

PAUL: Let me ah get back to me Monday, that be the best way

SGC-82-0019: Get back to me Monday

PAUL: Yeah

SGC-82-0019: You sure

PAUL: Yeah, this way I can give you a good answer

SGC-82-0019: Well um, see cause them guys over there been putting pressure on me you know

PAUL: Yeah

SGC-82-0019: And I don't know what the hell Al's doing over here

PAUL: Well, what did he say?

SGC-82-0019: Yeah well you you don't have nothing right now huh, cause see I gotta I gotta give 'em something.

PAUL: Well Well here here's what I'm doing, I'm taking care of the other guy right now, I gotta take care of him

SGC-82-0019: Oh

PAUL: You understand

SGC-82-0019: Yeah, you want me to get back to you Monday

PAUL: Get back to me Monday

SGC-82-0019: For sure what time?

PAUL: Ah seven o'clock, Hello

SGC-82-0019: Seven o'clock Monday, but, ah

PAUL: Just get back to me Monday, We'll handle it, don't worry about it, they don't do it we'll do it

SGC-82-0019: Huh
PAUL: If they don't do it we'll do it, don't worry about it
SGC-82-0019: But you still, you haven't moved, you still hanging on to the thing right
PAUL: I ain't got some you know, and I'm taking care of what I got to take care of
SGC-82-0019: Yeah but see, see cause uh I don't want to hold on to the thing for long you know cause the guy he been putting pressure on, I been gone a month already
PAUL: Alright
SGC-82-0019: You know
PAUL: Its nothing to talk about over the phone, you know
SGC-82-0019: Yeah
PAUL: If I tell you not to worry about it, you don't have to worry about it alright
SGC-82-0019: Okay
PAUL: Okay, you'se the other day you said you were gonna give me a week you know,

(laughs) give us a little time, its all we need.
SGC-82-0019: Okay well what time Monday?
PAUL: 7:00
SGC-82-0019: 7:00 Monday?
PAUL: Yeah
SGC-82-0019: Okay
PAUL: Alright
SGC-82-0019: Okay
PAUL: I'll be at home if you got any trouble just give me a call
SGC-82-0019: Um
PAUL: If you have any trouble up there
SGC-82-0019: Well um
PAUL: I'm running.
SGC-82-0019: You want me to come up there right? Or you want to come here?
PAUL: Oh if we do that thing again
SGC-82-0019: Huh
PAUL: We do that thing again you come here
SGC-82-0019: Okay
PAUL: Alright
SGC-82-0019: Okay,
PAUL: Alright
SGC-82-0019: Okay, I'll talk to you then
PAUL: Okay
SGC-82-0019: Okay bye
PAUL: Bye bye
(END OF CONVERSATION)

Exhibit B

GOVERNMENT'S EXHIBIT NO. 12(b)
CASE NO. R-88-00178
IDENTIFICATION: JUL 29, 1988

(ringing)

AL:	Hello
SGC-82-0019:	Hello is Pauley there?
AL:	Who is this?
SGC-82-0019:	Lee
AL:	Who?
SGC-82-0019:	Lee
AL:	Who's B
SGC-82-0019:	Lee lee
AL:	Oh Lee
SGC-82-0019:	Yeah
AL:	No Pauley's not home right now, I don't he'll be home later on
SGC-82-0019:	Bout what time you know
AL:	No I doubt, where are you at now
SGC-82-0019:	Well I'm I'm calling long distance
AL:	Oh I see its too bad I mean uh, is there a message that I can give him when I see him
SGC-82-0019:	Well uh
AL:	See this I don't know when he'll be home
SGC-82-0019:	What about his wife, Joanie
AL:	Uh they both went out together, they went to visit some people, they went to see somebody
SGC-82-0019:	OH they went to see somebody
AL:	Yeah yeah
SGC-82-0019:	Okay
AL:	Okay, best I can do I'll
SGC-82-0019:	Uh you know, you know if they went to see George or what
AL:	I know what is its
SGC-82-0019:	You know they went to see George?
AL:	George, No I do not know his number, all I know is George when he comes to the house that's all, I know I don't know any more than that about him
SGC-82-0019:	Okay
AL:	Okay
SGC-82-0019:	Okay well when the best time for me to catch him cause he told me to call him back at seven o'clock you know
AL:	Who was that uh who told you

SGC-82-0019: Pauley
AL: He'll be back a little later, why don't you try a little later, then I don't know
SGC-82-0019: Okay I'll try a couple hours
AL: Yeah, okay
SGC-82-0019: Okay
AL: Okay
SGC-82-0019: Okay thank you
AL: Bye
(END OF CONVERSATION)

(dailing, busy)
(dialing, ringing)
PAUL: Hello
SGC-82-0019: Hello
PAUL: yeah, who's this Lee
SGC-82-0019: Yeah
PAUL: What's up
SGC-82-0019: Where you been
PAUL: I just got in the house
SGC-82-0019: Just walked in huh, what time Al been calling you
PAUL: I ain't got a hold of nobody
SGC-82-0019: You ain't got a hold of nobody, You sound like you out to space
PAUL: Yeah I'm out in space alright
SGC-82-0019: Working too hard huh
PAUL: Yeah
SGC-82-0019: What you think
PAUL: Huh
SGC-82-0019: How's the balance
PAUL: I don't know, still working on the other balance, What are you up there
SGC-82-0019: Huh
PAUL: Where's Al
SGC-82-0019: Where's Al
PAUL: Yeah
SGC-82-0019: He took his old lady to pick up the car
PAUL: Oh, When you coming by?
SGC-82-0019: When
PAUL: Yeah
SGC-82-0019: Well you told me to call you at seven and you was gonna have the balance

PAUL: Well I didn't say that I said I'll try, I said I'll try, its only been gone on three days right

SGC-82-0019: Yeah

PAUL: Your a tough man boy

SGC-82-0019: Well you know

PAUL: How'd you make out over there alright

SGC-82-0019: Well I just leave it with Al's shit

PAUL: Oh

SGC-82-0019: Well, oh shit well you you sound like you out of space you can't even talk straight

PAUL: Who can't

SGC-82-0019: You

PAUL: I can talk straight man, I always talk straight

SGC-82-0019: Yeah, so when you think you can take care of me

PAUL: Uh in a couple of days probably

SGC-82-0019: Couple of days

PAUL: Yeah

SGC-82-0019: Um is there anyway we can meet tomorrow you think

PAUL: Um I got to go to work I can't take no more days off

SGC-82-0019: Okay you got to work huh

PAUL: Yeah

SGC-82-0019: Cause uh

PAUL: I meet you at night you know

SGC-82-0019: Be late at night

PAUL: I can see you at night you know after 6 o'clock

SGC-82-0019: Around six or seven at night well let me call you back see if I can get ah a chance to come over here you know

PAUL: Yeah

SGC-82-0019: Over on your way

PAUL: Alright

SGC-82-0019: Okay

PAUL: Yeah

SGC-82-0019: But see but you know what, is there a way that you can come over with anything at all though, I mean you know, cause I got to give the guy in Chicago

PAUL: Well we got a problem, I got to give somebody something first, I have to get that thing

off my head, you know what I mean

SGC-82-0019: Yeah, you got to get the thing off your hand

PAUL: You know what I'm talking about

SGC-82-0019: Yeah

PAUL: You know he'll just eat me up if I don't

SGC-82-0019: What about what about like you know I mean

PAUL: I can get everything straight in like two or three days you know

SGC-82-0019: Two or three days

PAUL: Yeah, you know, with him and you you know

SGC-82-0019: Yeah but you know uh what about is there a way that you can get see cause I got some of this things going too you know

PAUL: Um hum

SGC-82-0019: Can can you the thing that I that I front you last time can you get that back to me you think

PAUL: Humm

SGC-82-0019: Cause I'm gonna need it you know cause them guys I got to go home man

PAUL: Yeah Well listen, can't I

SGC-82-0019: Cause see otherwise, otherwise they won't

PAUL: five days you're not even giving me five days I mean you call me up every night you got to give me at least five days you know

SGC-82-0019: Well you told me to call you Monday

PAUL: Right I told you to call me Monday, If I can do something you got to give me a few days that's all

SGC-82-0019: Yeah but you got two of them things to work with

PAUL: Yeah three, try and do something with em though you know

SGC-82-0019: Yeah

PAUL: I mean its moving but you got to give me a little time and I hate to talk over this phone

SGC-82-0019: I know

PAUL: It bugs me

SGC-82-0019: Yeah that

PAUL: I'd rather You come up here and we'll talk you know

SGC-82-0019: Yeah I know what you mean. Well I'll call you back

PAUL: **Okay good**
SGC-82-0019: **6 o'clock tomorrow**
PAUL: **Alright**
SGC-82-0019: **Okay,**
PAUL: **Yeah**
SGC-82-0019: **at night**
PAUL: **Right, after six alright**
SGC-82-0019: **Okay**
PAUL: **Alright**
SGC-82-0019: **Okay**
PAUL: **take it easy Lee**
(END OF CONVERSATION)

GOVERNMENT'S EXHIBIT NO. 14(c)
CASE NO. R-82-00178
IDENTIFICATION: JUL 29, 1982

Exhibit D(2)
4/13/82
Call to Bangkok

PORN:	Hello
BOON:	Hello. It is Porn? Did Ye come back yet?
PORN:	Wait a moment.
YE:	Hello
BOON:	Hello
YE:	Is it Boon?
BOON:	Yes.
YE:	Wait, speak with Ang. OK?
BOON:	OK.
ANG:	Hello
BOON:	Hay!
ANG:	Hi!
BOON:	What's up?
ANG:	What's up?
BOON:	How do you want it.
ANG:	Where are you now?
BOON:	In New York.
ANG:	Can you give me your telephone number?
BOON:	Telephone number?
ANG:	Huh!
BOON:	You'll call me?
ANG:	Yes.
BOON:	When?
ANG:	No, it's not like that. Do you have one? Perhaps, in case of emergency. I might not be able to reach you.
BOON:	Emergency?
ANG:	Yes.
BOON:	Emergency. . .Tomorrow, I will wake up in the early morning and drive to Chicago, you know?
ANG:	Yeh?
BOON:	Yes, I'll give money to him.
ANG:	I'll send someone today.
BOON:	Ha?
ANG:	I'll send someone today.
BOON:	Aoe!
ANG:	What are you doing? Are you coming back?

BOON: What for?

ANG: Aoe! Yesterday you said you need someone to go get it.

BOON: Right, then give it to Rajburi.

ANG: No. No, don't give it to him.

BOON: No?

ANG: No, keep it with you.

BOON: OK, and then. . . No, he wants 4 more.

ANG: Who?

BOON: That's why I'm not coming back.

ANG: I know, I know, you are not coming back, it's Ok. Today my friend is going. Give me your number.

BOON: Let's do it this way. When he arrives, have him call me.

ANG: What?

BOON: Tell him to call to the office, can you?

ANG: Yes. I can

BOON: Tell him to call to the office and leave a message where he is and then I'll call him. It's because here, I don't. . .you know.

ANG: Why?

BOON: I stay with him and I don't want to bother him.

ANG: That's what you want?

BOON: Yes.

ANG: Are you staying with him now?

BOON: Yes I'm now staying with him.

ANG: Oh!

BOON: But I did not from his house, understand?

ANG: Yes, I understand. If you drive to the place where you just mentioned. . .to TC. .will you get something there?

BOON: Drive to where. . .to Chicago?

ANG: No, to TC

BOON: To Rajburi, right?

ANG: Right.

BOON: And then.

ANG: Up there, is the airport being used? (reopened)

BOON: It has been used (reopened after snow)

ANG: Is New York being used now?

BOON: Yes.

ANG: Then come back.

BOON: To where?

ANG: Come back here today.

BOON: What for?

ANG: You want to wait there?

BOON: Yes, and Rajburi already sent a letter saying the man can come immediately because his boss is not there.

ANG: Here how is Wednesday.

BOON: Right.

ANG: Today is Wednesday and your document has not reached me yet. I have no way to buy that stuff.

BOON: Right. I know, But if we want to do it fast, can you give it to him?

ANG: No, I cannot. He is sitting here right now, but I cannot have more credits, because I have to wait for your document to buy the diamonds and rubies.

BOON: Oh?

ANG: Now, you come back immediately. When you get here, then you return immediately with Deng.

BOON: That's what you want?

ANG: Yes, it's better.

BOON: But I dare not going out nor coming in so often, understand?

ANG: I understand. If you are not coming, someone is going today.

BOON: When he arrives, have him call to the office.

ANG: Yes.

BOON: Then I'll call him, What day will he get there?

ANG: He is leaving today.

BOON: OK. If he leaves today, he will get there tomorrow right?

ANG: I think he'll go directly?

BOON: Directly? Can you tell him to come over to this area?

ANG: Where? To N.Y.? Where do you want him to go exactly?

BOON: Come to New york.

ANG: Huh!

BOON: Come to New York.

ANG: OK. I'll send him there. Where would be the nearest place for him to stay?

BOON: Anyplace. . in New York.

ANG: OK. In the city?

BOON: At Holiday Inn?

ANG: OK. Which one? The one in downtown?

BOON: Then he'll return immediately, right?

ANG: Right. You will keep one person right?

BOON: Ha?

ANG: You want one person to go there right?

BOON: Send someone to help me. Because. . .tell you the truth, if now I have 4, right?

ANG: Right.

BOON: Him, today 2, this evening 2.

ANG: I try to have it this week, but your document has not arrived yet, so it cannot be done, you know that.

BOON: Listen carefully. If this guy comes here and pick it up, will he return immediately?

ANG: Yes.

BOON: I give him six?

ANG: Yes.

BOON: OK, after six, can you take out 4 more?

ANG: Yes, I can.

BOON: After that, can you take out some more? like 10. . .

ANG: Yes, you know why? First, I want you to come back and then I'll send 5 or 6.

BOON: What do you want me to come back for?

ANG: Ha?

BOON: Why do I have to come back, my visa is now expired.

ANG: Already expired?

BOON: Yes, since the 30th.

ANG: No, that's not important. We can get a new one.

BOON: I know, but I go out and come back in, Ang. . I. . .

ANG: Don't come. You stay there.

BOON: If I have someone to help, 4 arrive and it's done in one day.

ANG: Huh! I'll send Deng.

BOON: It's done in one day, and then he can stay. It's

like this. Ang. . The sponsor of the black guy . . . Now, the black guy is not involved. He get the commission understand?

ANG: Yes.

BOON: The sponsor, he deals with me like this. He said that our goods, we take 60,000 right?

ANG: Right.

BOON: He told me to get my share from you. If he can get it for 60,000, he will take all.

ANG: No, we cannot do that. It's too low.

BOON: He will take for ever.

ANG: I know. How much do you charge him now? 750 right?

BOON: Right.

ANG: 750. .it cannot be lower than this. So keep it this way.

BOON: If he wants 4 each time. . . OK let's wait until I discuss with Deng one more time.

ANG: OK.

BOON: Is it good this

ANG: OK. What time will you call tomorrow?

BOON: Tomorrow. What time will he get there? Now it's Tuesday-night.

ANG: Yes, he is leaving today.

BOON: One day, so he'll get there tomorrow, right?

ANG: Right!

BOON: Thursday morning. . . .

ANG: I'll ask him about the time and flight number so I'll tell you on the phone.

BOON: No, let him get there first and then have him call Ang.

ANG: I think it's a waste of time.

BOON: No, I don't think so.

ANG: If you want it that way, it's OK.

BOON: Because I want to be safe, you know.

ANG: OK.

BOON: Like that, It's not safe.

ANG: Call me tomorrow.

BOON: If he is followed, I'll be in trouble.

ANG: No, he won't be followed. This guy is very clean.

BOON: I know, but I scare, because I have something you know. . .

ANG: I know. This guy has green card. His kids and wife are there. He is a good man.

BOON: OK. Tomorrow, I'll give him 60,000 and will he return immediately?

ANG: Yes, I tell him to come back immediately. After he arrives, the girl is going and Deng will follow.

BOON: 4?

ANG: 4 or 5, I'll take care of it.

BOON: OK. Put some more.

ANG: OK, But we cannot have it this week.

BOON: Not this week? So when?

ANG: I don't have money.

BOON: He is leaving today, right?

ANG: I'll let him go today.

BOON: OK. Today is the 14th, will get there on the 15th.

ANG: No later than tomorrow.

BOON: Get there on the 15th, that out on the 23rd, right?

ANG: Out the 24th and arrives on the 26th. That's right.

BOON: 4 or 5 right?

ANG: Right?

BOON: Is Deng coming?

ANG: Yes, Deng is going.

BOON: When Deng arrives, he is staying there. This turn 10 and deal with him.

ANG: Huh!

BOON: Because he. . .now we have to deal about the price in case he wants much more.

ANG: Don't give him much.

BOON: They are big, these buffalos.

ANG: I like it. Let's find the real thing. I also have the 50.

BOON: Do you have the 50?

ANG: Yes. I only need the document.

BOON: He really takes good care of me.

ANG: That's for sure. Because we make his company profitable, that's why he takes good care of you. Let's do it this way. . . .

BOON: OK. and then 20.

ANG: Call me back tomorrow.

BOON: Tomorrow, what time.

ANG: Tomorrow, when you call, I'll tell you what time he gets here.

BOON. I will not call. Let's do it this way. Tomorrow is Thursday, right?

ANG: Right.

BOON: Now it's Wednesday, right?

ANG: Right.

BOON: Thursday aoout. . . .Friday, in the morning.

ANG: Friday morning.

BOON: Early Friday morning, I'll call to your house.

ANG: Friday morning, you'll call me at home, right? OK

BOON: Friday in Bangkok's time, I'll call to your house to know where he is so I can give money to him.

ANG: OK. You can also send money to anybody.

BOON: Can I?

ANG: Yes, you can. Just write a letter telling whom do you want to give money to or to pay your credits..

BOON: He opens a Bank account for me.

ANG: Yeh?

BOON: It's more convenient.

ANG: Let's talk to Deng about it. OK? Don't try to get involve with the Bank account. It's a headache.

BOON: No. It's not a Bank in here. It's an outside Bank, understand?

ANG: If you can skip the Bank, do it.

BOON: Believe me.

ANG: OK. Friday, you call me in the morning.

BOON: OK. The 23rd get here the 26th.

ANG: Definitely!

BOON: 4, 5, 6, this kind of stuff, right?

ANG: Right.

BOON: When Deng comes this week. . Listen. . when the 26th arrives, rest Friday, there is 10 or 20 is OK.

ANG: OK. OK.

BOON: Just give him that.

ANG: I know.

BOON: Because his boss is not there.

ANG:	**OK**
BOON:	**That's all.**
ANG:	**Call me Friday.**
BOON:	**Yes.**
ANG:	**I'll give you his address so you can give it to him.**
BOON:	**OK. And he returns immediately, right?**
ANG:	**Right. I'll let him come back immediately.**
BOON:	**Is the 26th for sure?**
ANG:	**So he will get off in New York.**
BOON:	**Yes, send him to New York. But...is the 26th for sure? 5 or 6 is OK. Because I want him to get ready.**
ANG:	**Tell him that.**
BOON:	**5 or 6 right?**
ANG:	**O.K.**
BOON:	**That's all.**
ANG;	**OK. Good bye**
BOONE:	**Thank you, good bye. Hey! Wait. Take care of my wife, would you?**
ANG:	**OK. Two days ago, I gave her 5,000.00 for the rent.**
BOON:	**Good. Let's keep in touch.**
ANG:	**OK. Call me back on Friday.**
BOON:	**In early morning to your house.**
ANG:	**Right, in early morning. OK?**
BOON:	**O.K. Good bye.**
ANG:	**Good bye.**

END OF CONVERSATION

SGC-82-0019 and JOANIE PATRICK - TRANSCRIPT EX. D(1)

GOVERNMENT'S EXHIBIT NO. 14(b)
CASE NO. R-91-00118
IDENTIFICATION: JUL 29, 1992

U/I	Hello
SGC-82-0019	Hello, Pauley there?
u/I	No
SGC-82-0019	No?
U/I	No
SGC-82-0019	You know when he'll be back?
U/I	Ah no. Not really.
SGC-82-0019	Cause he told me to call him after 6.
U/I	Ah, who, who, who's speaking?
SGC-82-0019	Lee, is Joanie there?
U/I	Yeah
SGC-82-0019	Can I speak with her?
U/I	Mom
Joanie	Hello.
SGC-82-0019	Hi, Joanie
Joanie	Who's this?
SGC-82-0019	Lee
Joanie	Oh, hi Lee, how are you?
SGC-82-0019	Oh I'm fine. Has Al been calling?
Joanie	Al?
SGC-82-0019	Yeah
Joanie	I don't know. I ah, not I didn't speak to him maybe Pauley did.
SGC-82-0019	Yeah
Joanie	Yeah I don't know. What are you doing?
SGC-82-0019	Ah, I'm you know. Pauley told me to call back to talk to him after 6 o'clock
Joanie	Well, he's working all night tonight.
SGC-82-0019	Oh he's working all night tonight.
Joanie	Yeah he's not coming in.
SGC-82-0019	Is that right?
Joanie	Yeah. Do you have a number?
SGC-82-0019	Well ah not really - I'm at the pay phone.
Joanie	Yeah - no he he said ah if if anybody called tell them to call tomorrow, the cause he's working all night.
SGC-82-0019	What time? - In the morning?
Joanie	Ah, no he'll be he'll be ah he's gonna stay right on tonight cause I got the kids here, normally I go in to pick him up.

SGC-82-0019	Uh huh
Joanie	Ah, like tomorrow evening like about 6:30 - 7
SGC-82-0019	6:30 or 7?
Joanie	Yeah
SGC-82-0019	Ok
Joanie	Cause ah, you know like that's when he comes in.
SGC-82-0019	Ok
Joanie	You know, I'm babysitting
SGC-82-0019	Ok
Joanie	Suragate mother her
SGC-82-0019	Ok
Joanie	It's like I got my 2 nephews
SGC-82-0019	Ok - 6:30 or 7 o'clock tomorrow night, huh?
Joanie	Yeah
SGC-82-0019	Ok
Joanie	Ok
SGC-82-0019	Ok, I'll call back
Joanie	Where's Al at?
SGC-82-0019	Where's Al? He's on, he's on his way to Chicago.
Joanie	Uh huh
SGC-82-0019	You know, you know if -
Joanie	Where you at? I thought that's where you were?
SGC-82-0019	Huh?
Joanie	I thought you were there.
SGC-82-0019	yeah, I was there.
Joanie	Where?
SGC-82-0019	He went, see Al went to pick up his old lady.
Joanie	Uh huh
SGC-82-0019	Right - and went back to Chicago.
Joanie	Un huh, - where you at?
SGC-82-0019	I'm, I'm waiting for him right now.
Joanie	Oh, over there?
SGC-82-0019	Yeah, I'm I'm over there right now, waiting for him.
Joanie	Oh
SGC-82-0019	What about, What about George, you see him?
Joanie	Ah, last night I saw him.
SGC-82-0019	Huh
Joanie	They both went out for awhile, last night.

SGC-82-0019 Oh they did?

Joanie Yeah, they been pretty much on the go.

SGC-82-0019 I see.

Joanie Well listen, I'll tell you what. Call tomorrow night, like 6:30 - 7, and I'll make sure he'll be here.

SGC-82-0019 Is - ah -

Joanie Cause if he worked they poured concrete today.

SGC-82-0019 Ok

Joanie And if, and if he worked today I know he's definitely not working tomorrow.

SGC-82-0019 But I, I gotta go through Pauley, huh?

Joanie Why?

SGC-82-0019 George not, I mean you know

Joanie Your not gonna catch him at home either - He's hardly ever home, his wife is just about talking to him.

SGC-82-0019 Is that right?

Joanie Yeah that's what he said last night, his wife is really pissed off. Said, Easter he was with his mother cause his mother's in a nursing home, except she's you know she's not well.

SGC-82-0019 Is there a way that I can try to catch him, you thin?

Joanie No, I doubt it. - and - because his wife isn't really you know, as understanding as I am with these thing.

SGC-82-0019 But I I know you not allowed to give his number away right?

Joanie No.

SGC-82-0019 Ok.

Joanie Well ah only because of his wife - you know what I mean?

SGC-82-0019 Yeah

Joanie Cause ah, like, she gets a little nuts.

SGC-82-0019 I see.

Joanie That's what I said she's not as understanding as I am.

SGC-82-0019 I see

JOANIE: You know

SGC-82-0019 Ok, well let me get off the phone

JOANIE: Alright.

SGC-82-0019: Cause I'm charging this call to some other numbers.

JOANIE: Yeah, ah, well I hope you know, it's not gonna get, you know, you in trouble. Is it?

SGC-82-0019: Well, a little bit, you know, cause they waiting for me.

JOANIE: Yeah

SGC-82-0019: You know

JOANIE: Alright, well just call back tomorrow night, You know, cause he's he's gonna be at work all night tonight. Alright

SGC-82-0019: Say that again

JOANIE: He's gonna be at work all night. Usually I pick him up see he's gonna work til 12 o'clock

SGC-82-0019: Oh, you pick him up

JOANIE: If I didn't have the kids here I'd go into the city and pick him up

SGC-82-0019: I see

JOANIE: Then he's come home.

SGC-82-0019: Right.

JOANIE: But - its too much of a hassle to get back there like for the morning if he's gotta take the bus cause by the time he gets in on the bus it's like 1, 1:30, and then he's getting up at 5 o'clock in the morning again - you know to go back to work so he's just gonna stay there tonight.

SGC-82-0019: I see, well it's better for me to call him back at 6:30 or 7 o'clock tomorrow

JOANIE: 7 o'clock tomorrow right - make it 7 o'clock

SGC-82-0019: Ok

JOANIE: This way, you know, this way I know he'll be here

SGC-82-0019: So there anyway I can call him at work you think?

JOANIE: No, they don't have no phone there

SGC-82-0019: Oh, ok

JOANIE: Ok

SGC-82-0019: Ok

JOANIE: Alright I'll talk to you later

SGC-82-0019: Ok, thanks Joanie

JOANIE: Hang in there.

SGC-82-0019: Bye - Bye

END

Exhibit E
4/15/82
Conversation No. 1 between Boonyarit Voravittiaya and Viroj Chitwonkollert

GOVERNMENT'S EXHIBIT NO. 15
CASE NO. R-82-60178
IDENTIFICATION: JUL 29, 1982

LADY:	Hello
BV:	Hello, can I speak to Ang please?
LADY:	Hello
BV:	Hello, can I speak to Ang please?
LADY:	Who?
BV:	Ang! Ang!
LADY:	Open the door please
VC:	Hello
BV:	Hello
VC:	Hello
BV:	Hello
VC:	Hello, ah!
BV:	What's up?
VC:	Wait! Can you call back later?
BV:	Why? Oh! Oh! I'm now outside. Did he arrive yet?
VC:	Thursday, around 1 p.m.
BV:	Ha?
VC:	He'll get there. . .
BV:	Ao' Did he call you back yet?
VC:	Ha?
BV:	Did he call back yet?
VC:	He'll call to the office. That's why I'll check to the office right now.
BV:	Yeh?
VC:	Yes, can you call back later?
BV:	What time?
VC:	In just a few minutes.
BV:	Yeah!
VC:	Because he should call late last night.
BV:	Ok! Ok! I'll call back in 15 minutes.
VC:	You can call back in 10 minutes.
BV:	in 10 minutes? Ok!
VC:	Yes, yes
BV:	Ok! Ok!
VC:	Ok! Ok!
BV:	Ok! Ok!

Conversation No. 2 between Voravithaya and V. Chitmongkollert

VC: Hello
BV: Hello
VC: Hello. I cannot hear at all.
BV: Hello. I cannot hear. I'll call back.
VC: I cannot hear at all.
BV: Hang up first! Hang up first!

Conversation No. 3 between Voravithaya and V. Chitmongkollert

VC: Hello
BC: Hello
VC: Yes
BC: Do you hear me?
C: Yes I do.
BC: Ok!
VC: Do you remember phat?
BV: Yes.
VC: Phat, who went to Deng's house.
BV: Phat, he is a friend of. . .
VC: Vanchai
BV: Yes.
VC: Ok! Ok! listen to me now. Thursday. What's today's date over there?
BV: It's now Thursday night.
VC: is it Thursday night?
BV: Yes.
VC: Flight KL 645, you can check again.
BV: Yes.
VC: KL 645, time 1:20 PM. 15 PM night or day time?
BV: 1:20? It's afternoon.
VC: 1:20 in the afternoon?
BV: He has been arrived.
VC: Yes, but he did not call back yet.
BV: Aao!
VC: He agreed to call back when he get there.
BV: Why he did not call back yet?
VC: Not yet. Today, he might call back.
BV: What we gonna do? Where did he go to? To New

York?

VC: To New York.

BV: Yeh?

VC: Yes.

BV: So, he's now in New York.

VC: He's already there.

BV: Ok! Ok! It does not matter. It's better like this...

VC: And. . . this. . . Let's talk about the thing first.

BV: Go ahead.

VC: It means, he'll stay in New York and then call me back.

BV: Yes.

VC: I told him to stay in New York and call me back.

BV: Yes.

VC: To tell me his number, so I can give it to you and you'll be able to see him. Wait. Wait. The girls will be on their way in a few minutes.

BV: What girls?

VC: Girls, who will be given to him.

BV: Yes, yes. How many?

VC: 2 girls.

BV: 2 more girls?

VC: Yes, 2 more girls are ours.

BV: Are they yours, Ang?

VC: No. It's there, from here. 3 more girls are theirs, over there.

BV: Yes, yes.

VC: 2 passports

BV: Yes.

VC: They are leaving soon.

BV: Soon? Ok! They'll arrive on Monday, right?

VC: Yes.

BV: And then

VC: I'll call my friend up there.

BV: To Ratburi?

VC: Yes, I'll call to Ratburi.

BV: Yes.

VC: You know the time, right; So you can call him.

BV: Ok! On Monday or Tuesday, right?

VC: On Monday.

BV: Ok! As before. . .is it the same code?

VC: Huh! huh!

BV: Do you want me to check back?

VC: Ha?
BV: Do I have to call back?
VC: Please, call back again.
BV: Can we do it this way?
VC: Ha?
BV: Tomorrow.
VC: Huh!
BV: What time is it now? It's now in the morning, right?
VC: It's now 7:30 O'Clock in the morning.
BV: Ok! in Bangkok, right?
VC: Yes, in Bangkok.
BV: Ok! Ah! What time will you come home tonight?
VC: get in here, right?
BV: Yes.
VC: Late
BV: Late, 10AM.
VC: Ha?
BV: Huh! 10PM.
VC: Tonight?
BV: Yes.
VC: You'll call, tonight?
BV: Yes. If 10. . .It's 10AM, 10PM. . .It's now Friday night, right?
VC: What time is it now, over there?
BV: Now? It's now 7 o'clock. 7:20PM Friday night.
VC: Your time, right?
BV: Yes.
VC: Can you call back in the afternoon?
BV: I might not wake up on time. It's better like this. Tomorrow. . .Tonight, between 9 to 10 o'clock at night. . .
VC: Can you do it before that? Because he'll call back, today, for sure.
BV: Ha?
VC: He'll call back for sure.
BV: No. But me, I dare not going out, you know?
VC: Oh! You'll come to outside, right?
BV: Yes.
VC: It's all right. . . .
BV: No. I come to outside and charge to elsewhere.
VC: Hay! They'll collect here.
BV: No. They won't collect there. They'll collect here

in this city, in New York.

VC: Yeh, ok!

BV: Yes, he has his way.

VC: You call back tomorrow

BV: It's not tomorrow. It's between 9 to 10PM.

VC: Ok! You'll call back tonight, right?

BV: Yes. Because around 1PM, I'll go to see him.

VC: This afternoon?

BV: It's between 9 to 10PM in Thailand, right? It's between 9 to 10AM in here.

VC: Right.

BV: In it right?

VC: Huh! Ok! Good! good! It's better that way.

BV: Right? I call him and then in the afternoon I'll go up there to see him.

VC: Ok! good!

BV: He'll return immediately, right?

VC: Right. I told him to come back immediately.

BV: Ok! How about these 2?

VC: Wait. . . Will you send some of yours?

BV: How do you want it? Will you send someone to help me?

VC: It's up to you.

BV: Ha?

VC: You have it. Why do you want to keep it?

BV: Yes, right.

VC: You can come back to take the thing, right?

BV: Yes.

VC: I'll arrange it for you. And these 2 girls. . . What do you think?

BV: What we gonna do?

VC: I don't know yet. Let's talk about details tonight.

BV: Ha?

VC: Tonight, talk about details.

BV: No, because. . . Will he take more?

VC: Yes, more.

BV: Ha?

VC: Next week, 3 or 4 more girls.

BV: Oh! next week for sure, right?

VC: Yes.

BV: Ok! but these 2 for sure, right?

VC: Sure, sure!

BV: And. . . is the mustached guy coming?

VC: He's going. He's following. . .
BV: Is he following these 2 or those?
VC: These 2 might not be on time.
BV: Ok!
VC: These 2 might not be on time. But I told him about the document.
BV: Ok! But next week, before the end of this month, will it be on time?
VC: Yes, yes, yes.
BV: Ok! But next week, before the end of this month, will it be on time?
VC: Yes, yes, yes.
BV: Ok! Ok!
VC: If you have sometime today, go see your friend.
BV: Which one?
VC: Your friend, so you'll be able to get it ready for Monday.
BV: Right. I'll see him soon, because I stay with him too.
VC: When the girls arrive, he can take them right away.
BV: Hay! is Deng coming? My friend asked me to buy some cigars for him. Can you take care of it?
VC: What kind of cigars?
BV: Cigars from Cuba.
VC: Are there for sale here, in Thailand?
BV: Here, they don't have it.
VC: Can you repeat it?
BV: Cigars from Cuba. Cubain cigars.
VC: Cuban Cigars. Any brand?
BV: From Cuba. But from Cuba only.
VC: Yes
BV: Ok!
VC: Any brand?
BV: Yes, from Cuba. They know.
VC: Ok!
BV: Send 2 or 3 boxes.
VC: Ok!
BV: At 9 or 10PM, I'll call back to this house, ok?
VC: Ok!
BV: Ok! good bye.
VC: Ok!

Conversation No. 4 between Voravithaya and V. Chitmongkollert
4/16/82

VC: (Pass me a pen)
BV: Hello, can you hear me?
VC: Yes, I can hear you. Where are you in New York?
BV: Ah!
VC: 581
BV: 581
VC: 3300
BV: 3300
VC: 902
BV: 902, right?
VC: Yes.
BV: Is it the room?
VC: The front. . .12. You know it, right?
BV: Ha?
VC: The front 212.
BV: Yes, yes.
VC: Right?
BV: Yes.
VC: And then. . .What time is it now, over there?
BV: Now, it's 10 o'clock
VC: Yes.
BV: 5 more minutes to 10 o'clock
VC: He's there. He's not going anywhere.
BV: Tell him to stay there. When I get there in the afternoon, I'll call him.
VC: Ha? What time?
BV: In the afternoon.
VC: Afternoon? Why you go in the afternoon? You are not available now?
BV: I gonna eat and take a shower first.
VC: Yeh? can you hurry up? because something is going to some town. You might not get to him on time.
BV: What time he's going?
VC: I don't know. That's why I want you to contact him right now.
BV: Ok! I'll speed up as fast as I can.
VC: You are going now, right?
BV: Right! I'll ask him to send someone to pick me up.

VC: Who? send who to pick you up?
BV: The black guy.
VC: No! no! you go by yourself.
BV: No. I know. I want him to accompany me to. . .
VC: Yeh?
BV: Yes.
VC: I think you go by yourself, it's better.
BV: Go by myself?
VC: Yes.
BV: Ok! Ok! And in Ratburi, should I contact by myself?
VC: Ok! Retburi? Ratburi. . .
BV: Yes.
VC: You can use the old one.
BV: Do I have to give something to him? No? You'll send Deng to take care of it, right?
VC: No! You don't. . . You call to Ratburi.
BV: Yes.
VC: You pick up the document.
BV: Ok! Huh!huh!. The fresh fish. . . Deng is coming to take care of it, right?
VC: You take care of it first. Up to your first.
BV: I know that. Ok! There is nothing else? And. . don't forget the cigars!
VC: Yes. From Cuba, right?
BV: Yes. From Cuba, not from Burna.
VC: Yes. Cuba. Cuba.
BV: Ok! Ok!
VC: Wait! Wait! Hello.
BV: Yes.
VC: Do you know him, right? He's phat!
BV: Yes, I would remember if I see his face.
VC: Yes, right! When you see him. . .because I'll wait for his call.
3V: Yes.
VC: When he gets the document from you, tell him to call me.
BV: Ok!
VC: Don't forget to tell him to call back to this number. I'll wait right here.
BV: Ok! does he have the number?
VC: He does not have it. You give it to him.
BV: Ok! Ok!

VC: Have him call me back. . . because I have some business to tell him.
BV: Ok!
VC: Don't forget it?
BV: Ok! Ha?
VC: I think it's not later than 1 hour.
BV: Ok!
VC: Because. . . he's now waiting. . .
BV: I'll call him right now, and after taking a shower. I'm leaving at once.
VC: You can be with him when he call me.
BV: Ok!
VC: You don't have to say anything to him.
BV: Ok! When I get to him, just pass over the document, right?
VC: How much will you give?
BV: Ha? I'll have it first, because the guy has opened the bank account. This crazy guy has opened the bank account for me.
VC: Don't get involved with the bank.
BV: Yes. I take care of it.
VC: Are you sure you'll call back? I want to know, because when he comes I would tell him how much?
BV: I thin. . .not yet. Let someone come up here to take care of it at the same time. It's better.
VC: Ok! Ok!
BV: Right? also, tell him that. .if not, he'll be confused.
VC: Damn it. Too much more has arrived. Ok?
BV: Ok!
VC: When you get to him, you call back, ok?
BV: I'll contact him first, so he would not have to worry.
VC: No later than 1 hour. I'll wait.
BV: Ok!
VC: Ok! good bye.
BV: Ok! good bye.

(END OF CONVERSATION)

GOVERNMENT'S EXHIBIT NO. 186(b)
CASE NO. R-82-00113
IDENTIFICATION: JUL 29, 1982

EXHIBIT E
4/16/82

Conversation No. 5 Between Voravithaya and Boripat Siripan

PHAT:	Hello
BV:	Hello, are you Phat?
PHAT:	Yes.
BV:	It's me. Boom.
PHAT:	Yes.
BV:	He told me to come to see you soon. But now...can I come in late evening? Because I have to ride the train.
PHAT:	Is it far away?
BV:	It's far enough. I have to take the train.
PHAT:	Oh! It's good that you call because I worry
BV:	That's why I call you first. He asked you to call him back right now.
PHAT:	Right now?
BV:	397-1810.
PHAT:	Wait. I have to write it down. 397-1810, right.
BV:	Right.
PHAT:	This evening, about what time? So I can get ready on time.
BV:	Around 6 o'clock or before 6 o'clock. I'll see you in the lobby, is it good?
PHAT:	So I have to stay one more night.
BV:	Yes. Please stay 1 more night because I don't want to miss the appointment.
PHAT:	Oh!
BV:	Don't worry. . .because I have to take the train. I'm not in New York side. I'm in the other side.
PHAT:	Ok! Are you in Brooklyn?
BV:	No. I'm in New Jersey.
PHAT:	Oh! In New Jersey? I see
BV:	Understand? I have to take the train and I want to do it good, right?
PHAT:	Yes.
BV:	397-1810.
PHAT:	Call him now?
BV:	Yes, ask for Ang.
PHAT:	Oh! Ang?

BV: You explain to him not to worry.

PHAT: Yes, yes.

BV: Tell him that I already contacted you. When I get to the hotel, I'll call you up.

PHAT: Yes, 6PM. Here?

BV: Between 5 to 6PM for sure.

PHAT: 5 to 6 PM. I'll wait for you. . .because I have not eat anything yet since last night. I though about going out, but you might call in.

BV: Ok! 5 to 6 o'clock and we can eat down there too.

PHAT: Yes.

BV: I'll call you up from the lobby, then you go down to see me.

PHAT: Yes. It's all right.

BV: You call and tell him not to worry about anything because we make sure that everything cannot be failed.

PHAT: Yes.

BV: Understand?

PHAT: Yes.

BV: Explain it to him. Because I have to take the train and then the taxi.

PHAT: Yes, ok! ok!

BV: 397-1810

PHAT: Yes.

BV: 5 to 6 o'clock, you wait there. I'll call you up.

PHAT: Yes.

BV: Ok! good bye!

PHAT: Ok! good bye!

TELEPHONE CONVERSATION BETWEEN BOONYARIT VORAVITHA AND SIHADEJ CHINDAWONGSE

ON APRIL 23, 1982 TO CHICAGO - EXHIBIT M

LADY:	Hello
B.V.:	Hello. Is Mr. Sihadej home?
LADY:	Yes, he is. Hold on a moment please.
B.V.:	Yes.
S.C.:	Hello. What's up?
B.V.:	Hello, I'm Payak, brother.
S.C.:	I just came home. I've been waiting till past 7 p.m.
B.V.:	I'm sorry. I have a serious problem.
S.C.:	I thought you gonna call. That's why I've wait.
B.V.:	I'm sorry that I just called now.
S.C.:	I got home just now. I've been waiting since the day till late.
B.V.:	I'm very sorry because he won't give me the answer till Monday. I'm not in trouble. Bangkok is disappointed about me and I don't know what to do. I'll call him again in a moment. But brother, you don't have to worry.
S.C.:	Huh.
B.V.:	If something happens, I'll take care of it for you first. I already told him so.
S.C.:	And then. . .when?
B.V.:	Monday. I won't know till Monday. You know, I dare not to talk on the phone.
S.C.:	Monday?
B.V.:	Monday. I'll call again. I'll call Bangkok in a moment.
S.C.:	Yes.
B.V.:	Yes, good-bye.
S.C.:	Wait. You have to understand me. . . .
B.V.:	Have you got some more, brother?
S.C.:	I won't know till Monday.
B.V.:	Monday?
S.C.:	Yes.
B.V.:	Yes, thank you. . . . .

GOVERNMENT'S EXHIBIT NO. 20(b)
CASE NO. R-82-0178
IDENTIFICATION: JUL 29, 1982

Exhibit "O"
4/26/82

BOON Hello.
LADY: Hello.
BOON: Where is it?
LADY: 398 1710
BOON: Is Ang there?
LADY: Yes. Hold on a moment please!
BOON: Yes.

BOON: Hello. Hello.
ANG: Hello.
BOON: It's me.
ANG: Hello.
BOON: Hi, how are you?
ANG: Fine! What's up?
BOON: It's been OK.
ANG: Are you now. . .
BOON: Yes.
ANG: What you gonna do?
BOON: OK! He wants more.
ANG: Yes?
BOON: What we gave him, all 3 persons before and 3 persons after, he already cleared them up.
ANG: Yeh?
BOON: Now, he has about 500,000 or 600,000.
ANG: Yeh?
BOON: He wants more.
ANG: No, What are you doing now? yourself?
BOON: What do you want me to do?
ANG: What?
BOON: Can you send some next week?
ANG: Let's do this. Can you come back in 1 or 2 days? come back first.
BOON: Go back? Oh! No! If something happens I'll be responsible for it. I dare not.
ANG: Why? What's happening?
BOON: No. If something happens with the money which I'll carry with me. . . can you send someone to see me?
ANG: Yes, but can you go to Vancouver?
BOON: Oh! No!

ANG: Can you go? I'm going myself.

BOON: If you are going by yourself. . It's up to you.

ANG: No, what do you thing? Is it convenient?

BOON: It's convenient, but. . .

ANG: Can you go out there or not?

BOON: You are going by yourself, but how about the girls?

ANG: The girls? You go out there to see me first and then we'll talk about them.

BOON: Yes.

ANG: Are you going out there with him?

BOON: Yeh! But you cannot speak the language good.

ANG: Aao! I am going with Deng.

BOON: Oh! Go to Van?

ANG: Yes.

BOON: OK. It's convenient.

ANG: I'm going to England.

BOON: To England? Where is convenient for you?

ANG: Anyplace is convenient for me. How about you?

BOON: Me? Anywhere! But Canada is more convenient.

ANG: OK! I gonna buy it today.

BOON: No, if the girls are followed by 8 or 10 like this I'll tell him to get ready for payment out there.

ANG: Let's do this. How many persons are going with you?

BOON: About 2 persons.

ANG: Oh! Is there only one person from his side?

BOON: No. He, himself, is not going. His attorney is going.

ANG: You mean only one person.

BOON: Yes. And one more person is a black man.

ANG: You and a black man?

BOON: Yes.

ANG: And you? All in 3 persons.

BOON: Yes.

ANG: OK. In what city?

BOON: Any city in this area.

ANG: You name it. Because it's convenient for me to start from here.

BOON: How about Toronto?

ANG: Toronto? It's not Van?

BOON: No.

ANG: Van is further more, right?

BOON: Right.

ANG: OK! What day?

BOON: Wait! Do you want him to arrange things like hotels and. . .

ANG: No, no. I'll take care of myself. How can I contact you when I get there?

BOON: When are you leaving? God damn it! What I gonna do now. I don't have the telephone number. Let's do this. Can you call me here?

ANG: Wait.

BOON: Because I'm now in this area.

ANG: No, if you gave me your number. (give me a pen - he ask someone) I go get the tickets today, and then I'll call you.

BOON: No, you come over here to pick it up and I'll tell him, to bring more. I did not give to Ratburi yet.

ANG: Now, you have 120 bahn with you, right?

BOON: Right.

ANG: It does not matter. You prepare for 120 more... Hay! are there many small bills?

BOON: Small bills? Not too many. I'll ask him.

ANG: Yeh?

BOON: Yes.

ANG: Last time, there were too many small bills.

BOON: Do you want large bills?

ANG: Yes.

BOON: Coming 2 persons, right? When I got there, I'll give you and then I'll tell him to prepare how much for you. He has more right now.

ANG: Yes?

BOON: Yes. He has too much left right now.

ANG: He himself is for sure right?

BOON: Oh. Ho! Ang. Do you have a pen yet?

ANG: What?

BOON: Do you have a pen yet?

ANG: Yes.

BOON: 301

ANG: OK.

BOON: 301-659-9320

ANG: Any extension?

BOON: No.

ANG: Directly?

BOON: Yes.

ANG: I'll call to let you know.

BOON: Ask for Mr. Lee.
ANG: Lee, right?
BOON: Right. Lee, Lee.
ANG: OK. I'll call today to let you know what day I'll get there.
BOON: OK! What day?
ANG: Today! I'll call today!
BOON: What time?
ANG: Today. It's now 8 A.M.
BOON: Right.
ANG: I'll go out in a moment to get the tickets, so I'll call in the afternoon.
BOON: No, do you want him to arrange for you? or you'll take care by yourself? like lodging?. .
ANG: No, don't worry. I'll take myself.
BOON: OK! Don't forget cigars!
ANG: From Cuba, right?
BOON: Right. Did you find it yet?
ANG: No, not yet. I've been looking in many places. I'll try again today.
BOON: OK. So, you decide to come with "Yig", right?
ANG: I think so.
BOON: Is "Yig" coming?
ANG: Ha?
BOON: Is he coming?
ANG: Yes, he is. But can you insist him to come? I told him, but he dare not to come.
BOON: Oh! God damn it! How he dares not to come? If it's that, it would have been finished by now?
ANG: Like this. . Hello.
BOON: Yes.
ANG: You get 120 prepared to go out there, right?
BOON: Yes.
ANG: OK! You've been prepared to go out there.
BOON: Yes.
ANG: And then, how much more can he bring out?
BOON: He can bring out as much as he wants. He's going by his private airplane.
ANG: Tell him like this. Tell him to bring 240 more.
BOON: 240, right?
ANG: There is nothing to do with your 120.
BOON: OK! The old one 120 and add 240 more, right?
ANG: 120 are with you, right?

BOON: Right.
ANG: OK. You bring 120 and bring. . 240. . . Bring 200 more.
BOON: 200, are they enough?
ANG: 200, because the other 40 I want you to give it to my friend.
BOON: OK.
ANG: Right?
BOON: I don't have to give this to him yet, right?
ANG: Ha?
ROON: I don't have to call him, right? You gonna call him yourself?
ANG: You don't contact him at all right now.
BOON: OK. I won't contact him at all.
ANG: When you come to see me, you give me 120.
BOON: OK.
ANG: And prepare to give me 200 more.
BOON: 200?
ANG: Yes.
BOON: OK! OK!
ANG: 200, and then I'll tell you to go back, what to take and how much to give him.
BOON: OK.
ANG: Right?
BOON: OK.
ANG: You prepare as this.
BOON: OK. About that matter, don't worry. Tell everybody that I'm fine.
ANG: OK. when you give me 200, so I'll tell you to go get it.
BOON: OK.
ANG: Now, I give it to other place.
BOON: Yes. OK.
ANG: Right?
BOON: Yes. OK.
ANG: OK.
BOON: Yes.
ANG: I'll call you back today!
BOON: Yes. What time? About how many more hours?
ANG: Do this way it's better. .
BOON: It's now 8 A.M., right?
ANG: About 6 or 7 more hours.
BOON: Oh! Ho! It's late here, now.

ANG: Yeh?
BOON. Yes, how about. . . It's now 8 A.M. ..9 or 10 PM.
ANG: 9 or 10 P.M.? It's only 2 hours away.
BOON: No, 9. . 4 P.M. there.
ANG: Here? tonight?
BOON: Yes. Here, right now, it's pass 9 o'clock.
ANG: There, what time is it now?
BOON: 9 o'clock and 5 minutes.
ANG: At night, right?
BOON: Yes.
ANG: 9 o'clock? You want to call at 9 or 10 o'clock, right?
BOON: Yes.
ANG: 12 or 13 more hours.
BOON: Yes, about 10 A.M.. 10 P.M. in Bangkok.
ANG: Tell me the exact time.
BOON: 10 to 11 o'clock in Bangkok is better.
ANG: Tonight, right?
BOON: Yes.
ANG: Now, it's 8 o'clock.
BOON: 8 o'clock, so about 14 to 15 more hours.
ANG: OK. I'll call you tonight.
BOON: Yes. OK.
ANG: Right?
BOON: 120 and 240 more?
ANG: Yes.
BOON: Yes. OK.
ANG: OK.
BOON: OK. Hay! Don't forget Cuban cigars?
ANG: Do you know what brand?
BOON: I don't know. Any brand is all right.
ANG: OK.
BOON: Buy a lot of them!
ANG: Do you want me to go to Toronto, right?
BOON: Yes. Toronto.
ANG: OK.
BOON: Because it's close to here.
ANG: OK.
BOON: Because he can go . . private . .
ANG: OK. Good bye!
BOON: OK. Good bye!
ANG: Yes.
The End!

GOVERNMENT'S EXHIBIT NO. 22(b)
CASE NO. R-82-00178
IDENTIFICATION: JUL 29, 1982

Exhibit Q
4/29/82
Conversation No. 1 - Boonyarit VORAVITHAYA and Unknown Female

BV: Hello.
Unk F/M: Hello.
BV: Hello, where is it?
Unk F/M: This is 397-1810.
BV: Can I speak to Ang?
Unk F/M: He's not home yet.
BV: Is he at the office?
Unk F/M: He's now on his way home, but hasn't arrived yet.
BV: Hasn't arrived yet?
Unk F/M: Yes.
BV; How long?
Unk F/M: About half an hour.
BV: OK. Ok. Tell him not to go anywhere.

Conversation No. 2 - Boonyarit VORAVITHAYA and Unknown Male

Unk Male: Who is speaking please?
BV: Hello.
Unk Male: Who do you want to speak to?
BV: Can I speak to Ang please?
Unk Male: Ha?
BV: Can I speak to Ang please?
Unk Male: Who is speaking please?
BV: Boon
Unk Male: Are you Boon?
BV: Yes.
Unk Male: Wait a moment. He's taking a shower.

Conversation No. 3 - Boonyvarit VORAVITHAYA and Viroj CHITMONGKOLLERT

V.C.: Hello.
B.V.: Hello.
V.C.: Hi.
B.V.: Hi. How are you?

V.C.: I'm fine.
B.V.: What's up?
V.C.: He's leaving tomorrow. Where are you now?
B.V.: Ha? I'm still inside.
V.C.: Ha?
B.V.: I'm still inside.
V.C.: The same guy will meet you. Don't come out.
B.V.: Ha?
V.C.: The same guy will meet you.
B.V.: Who? Do I know him?
V.C.: Ha? Yes, you do. You met him last time.
B.V.: The guy whom I gave money to?
V.C.: Yes.
B.V.: OK.
V.C.: Are you coming back immediately?
B.V.: How about the rest. How you want it. Those I told you that day.
V.C.: How much will you give him?
B.V.: How much you want me to give him?
V.C.: There are 12, right?
B.V.: Yes.
V.C.: Are you coming back immediately?
B.V.: He'll take some more, because he's ready.
V.C.: Right, I mean, you take it to the same guy. Give him 24.
B.V.: Including all?
V.C.: Yes. The old and the new one.
B.V.: Yes.
V.C.: The old one is 12, right?
B.V.: Yes.
V.C.: They are with you, right?
B.V.: Yes.
V.C.: The new one is 12.
B.V.: 12?
V.C.: Yes.
B.V.: And then he'll take care of it, right? Don't give it... I mean, you give him 12, the old one.
B.V.: Yes.
V.C.: The new one is 12, total of 24.
B.V.: Yes.
V.C.: You give him 24.
B.V.: Yes.
V.C.: You take 6 more.

B.V.: Yes. There are 6 left, right?
V.C.: Ha?
B.V.: There are 6 left, right?
V.C. 16
B.V.: Yes.
V.C.: With the new 2, total of 18.
B.V.: Yes.
V.C.: Right.
B.V.: Yes.
V.C.: You take 6 to upper here.
B.V.: Upper where?
V.C.: Diamond in 3 carat.
B.V.: Upper where?
V.C.: Go to same. . . .
B.V.: To Ratburi?
V.C.: Yes. You give him 6 more, then you call him but only after Phat arrived.
B.V.: OK. Ok. Do I have to see him first?
V.C.: You have to see him first.
B.V.: Nobody is coming up?
V.C.: No, you can come back immediately.
B.V.: Ha.
V.C.: There is nothing right now. I want you to come back first. It's better.
B.V.: OK. Ok.
V.C.: Is it good?
B.V.: In fact, we should see each other before and then come back together.
V.C.: See who?
B.V.: To talk over.
V.C.: You talk to him first, then come back. I'll make the arrangement here for you. OK?
B.V.: Is there anything down here?
V.C.: No, no.
B.V.: OK
V.C.: You give 24 to Phat.
B.V.: Yes.
V.C.: And then you take 6 more.
B.V.: OK.
V.C.: Take it to Ratburi.
B.V.: OK
V.C.: And then you take the diamond in 3 carats.
B.V.: OK. It's already here, right? Is it here, yet?

Let Phat come up here first before we take care of this matter, right?

V.C.: Yes.

B.V.: When is he coming? Tomorrow?

V.C.: I'll contact him one more time.

B.V.: When will he arrive?

V.C.: I think he's leaving tomorrow.

B.V.: Yes.

V.C.: And how can he contact you?

B.V.: In the same old way.

V.C.: Ha?

B.V.: When he gets there, have him call you, so I'll check back with you again.

V.C.: Can I give him your number? Is it good?

B.V.: No. It's not good.

V.C.: Ha?

B.V.: It's not good.

V.C.: No. His number.

B.V.: Oh. He has he number?

V.C.: Yes, he does.

B.V.: He's coming to this number, right?

V.C.: Yes.

B.V.: OK.

V.C.: Wait a moment. (Deng go get my wallet upstairs..) You call to this number.

B.V.: OK. When?

V.C.: Tomorrow is Friday. Let's take Saturday...Saturday in the morning.

B.V.: Yes, yes.

V.C.: Call him at night.

B.V.: Can he go with me? So you can meet him in Hong Kong. Is it good?

V.C.: Yes. If he can come, it's good.

B.V.: Go to meet him in Hong Kong or in England. What do you think?

V.C.: No. Go to the place your first mentioned.

B.V.: Hong Kong?

V.C.: Yes.

B.V.: OK

V.C.: Are you sure. . .because. . .

B.V.: Wait. Wait. I'll call back tomorrow.

V.C.: You call back tomorrow, right?

B.V.: I'll talk to him one more time.

V.C.: Let me have the number first.
B.V.: Yes. No. He does not have to come up here...He can meet him in Hong Kong. Isn't it better?
V.C.: Are you coming alone?
B.V.: No. With this guy.
V.C.: Aao. That's what you want?
B.V.: Yes.
V.C.: No. He's leaving here tomorrow.
B.V.: Yeh? Let him come....
V.C.: You have to meet this guy first, so you would know about that "3 carat".
B.V.: OK. OK.
V.C.: Understand?
B.V.: OK. OK.
V.C.: Do you want the number?
B.V.: Yes.
V.C.: Do you know the place where he went to before?
B.V.: I don't know.
V.C.: Where I've been there before. Do you know the area code?
B.V.: Yes.
V.C.: 452
B.V.: Yes.
V.C.: 2013
B.V.: OK.
V.C.: The period when I've been with the Western guy down here before.
B.V.: OK. I'll call in 2 days.
V.C.: Saturday, over there.
B.V.: OK. I'll talk to him and check back one more time.
V.C.: It's like this. You bring 24 and wait down there for awhile.
B.V.: OK.
V.C.: Wait for him, right? Call on Saturday. If you cannot reach him, you don't have to talk to anybody else.
B.V.: OK.
V.C.: Do you remember?...
B.V.: Ha?
V.C.: His name?
B.V.: Can he come up here to see me?
V.C.: Ha?
B.V.: Can he come up here to see me and then pick it up at the same time?

V.C.: It's not convenient. Wait for him. Give it to him and he'll return immediately.
B.V.: Let me get there first and I'll talk to him....I don't want to fly to anywhere, you know?
B.V.: Yeh?
B.V.: Yes.
V.C.: OK. You contact him.
B.V.: After that. . .go to Hong Kong, right?
V.C.: When you give him 24, wait for awhile. He'll call me so I'll call Ratburi.
B.V.: OK.
V.C.: You take 6 more to Ratburi.
B.V.: OK.
V.C.: After that....
B.V.: Oh. Do I have to give him first and then take the letter?
V.C.: Yes.
B.V.: Why?
V.C.: Because, here, he has been waiting, understand?
B.V.: Yeh?
V.C.: Ratburi...his friend was waiting for it...or it's something like this. It's nothing. After you give him 24, you take care of it. Then you come back immediately, right?
B.V.: If I take care of it. go to meet him there...because he is going with me.
V.C.: How many people are they coming?
B.V.: 2 or 3.
V.C.: Why so many?
B.V.: Because they have to bring money with them.
V.C.: But...They don't have to give it to me.
B.V.: If everything is OK, so they can pay for it over there.
V.C.: No.
B.V.: No. At first, they are taking those which you told me to get it from Ratburi, understand?
V.C.: Yes.
B.V.: Then, they are bringing money with them and ready to meet you over there.
V.C.: Yeh?
B.V.: Yes. Nobody won't have any trouble. If not, they might think you are coming up here. They are now ready to travel.
V.C.: No. Not there, because I could not get the Visa.

B.V.: Yeh?
V.C.: Yes, I did apply for it, but they said that the thing like you have one must have the American Visa.
B.V.: Oh?
V.C.: Yes. Ye already tried.
B.V.: Yeh?
V.C.: Let's do this...
B.V.: Let's talk about it one more time.
V.C.: No. Let's do this. It's for sure.
B.V.: OK. I talk to him first and I'll call you back tomorrow.
V.C.: Yes.
B.V.: OK.
V.C.: OK. Good bye.
B.V.: OK. Good bye.

GOVERNMENT'S EXHIBIT NO. 23(b)
CASE NO. R-82-0173
IDENTIFICATION: JUL 29, 1982

Conversation No. 1 Between Boonyarit VORAVITHAYA and Sihadej CHINDAWONGSE on 4/30/82 - EXHIBIT R

B.V.: Can I speak to Mr. Sihadej please?
Lady: Wait a moment please.
B.V.: Yes.

- - - - -

S.C.: Hello.
B.V.: Hello brother, it's me Payak.
S.C.: What's up?
B.V.: What's up?
S.C.: What did he say?
B.V.: He told me to give you money and pick up that one...
S.C.: Why he did not call at all?
B.V.: Yeh?
S.C.: There is problem. The thing has not come yet.
B.V.: It has not come yet?
S.C.: Where are you now?
B.V.: Me? I am now at....
S.C.: You have to wait.
B.V.: What did you say?
S.C.: He told me to wait for the money.
B.V.: Did he say that? He told me to give 60,000.00 to you and take 3 more.
S.C.: Huh. Why he did not call?
B.V.: Aao. He told me so. I just called him yesterday.
S.V.: Eh. What's wrong? Where are you now?
B.V.: No. But can I give it to you and pick up that one?
S.C.: Huh.
B.V.: I am now in this area.
S.C.: Why he did not give all?
B.V.: What all?
S.C.: All he owed, for the last time 2.
B.V.: All is 50,000.00, right?
S.C.: Where are you now?
B.V.: I am now in this area near the hotel.
S.C.: Can I have half an hour..no..one hour?
B.V.: One hour?
S.C.: Yes.
B.V.: OK.
S.C.: Can you call back in one hour?
B.V.: How about half an hour?

S.C.: I have to ask him first.
B.V.: Ask who?
S.C.: Ask him.
B.V.: OK.
S.C.: Call back later...about 3 o'clock.
B.V.: What time is it now?
S.C.: It's now 2:15 o'clock.
B.V.: OK.
S.C.: OK. Good bye.
B.V.: OK. Good bye.

EXHIBIT R
Conversation No. 2 - Boonyarit VORAVITHAYA and Unknown Female

U/F: Hello
B.V.: Hello
U/F: Hello
B.V.: Hello (Hello in Thai)
U/F: Who are you calling?
B.V.: Is this 552-2012?
U/F: No you have the wrong number.
B.V.: I'm sorry.
U/F: Un huh

EXHIBIT R
Conversation No. 3 - Boonyarit VORAVITHAYA and Unknown Female

U/F: Hello
B.V.: Hello, this is area code 213-452-2013?
U/F: Yes, who are you calling?
B.V.: Ah Pat
U/F: Pat is back in Bangkok.
B.V.: Oh you know when he's coming?
U/F: Well he was just here.
B.V.: Oh he was just there.
U/F: Yeah, he was here 2 weeks for about 4 days and now he's back in Bangkok.
B.V.: I see. OK, thank you.
U/F: Un huh.

EXHIBIT R

Conversation No. 4 Between Boonyarit VORAVITHAYA and Sihadej CHINDAWONGSE

B.V.: Hello. Where is it?
Lady: This is Thai consulate.
B.V.: Can I speak to Mr. Sihadej please?
Lady: Wait a moment please.
B.V.: Yes, yes.

- - - - -

S.C.: Hello.
B.V.: It's that you, brother?
S.C.: Wait a moment. I'm trying to reach him.
B.V.: Aao.
S.C.: I could not reach him.
B.V.: what we gonna do?
S.C.: Can you wait? I'am staying here late.
B.V.: Wait till what time?
S.C.: Til 4 or 5 o'clock.
B.V.: Oh. Ho. This evening....
S.C.: He did not say anything at all.
B.V.: Yesterday, he told me this...
S.C.: What did he say?
B.V.: He told me to give you 60,000.00...
S.C.: Are you talking about letter, right?
B.V.: Right. For the Visa's fee.
S.C.: Is it for the tuition?
B.V.: What? Right. It's for the tuition.
S.C.: And then pick up 3 more.
B.V.: Right. Right.
S.C.: And that's all, right?
B.V.: Right.
S.C.: Let me check on something first, because he did not tell me anything.
B.V.: I have to go back. I have been staying here for too long.
S.C.: Where have you been?
B.V.: He's waiting for me here. I'm going to L.A.
S.C.: When
B.V.: I'm leaving right after this, because I have to give money to someone else.
S.C.: Can I have one more hour? Because he did not say anything and I dare not...
B.V.: No. I'm responsible for it.
S.C.: But he ordered me not to do anything without hearing

from him....just before you called....

B.V.: But he told me last night....

S.C.: He said he'll call me. He said not to give it to nobody without his order. Just before you called... and why he did not call.

B.V.: I just called him.

S.C.: He should call me, because he told me to do that.

B.V.: Are you saying not to give to anybody?

S.C.: Yes. That's why I have to check with him first.

B.V.: No. I get the money ready for you.

S.C.: It's the rule, right?

B.V.: Right.

S.C.: He gave me that order.

B.V.: What we gonna do?

S.C.: I'm trying....

B.V.: I'm in a hurry, because someone was sent to pick up the money.

S.C.: Can I have just a moment? I'm calling him right now.

B.V.: What are you saying? I cannot hear you.

S.C.: I'm dialing. If I can get through, in half an hour I'll call him at Ang's house.

B.V.: Yeh?

S.C.: And let him go get...

B.V.: No. not yet. I cannot get through. The line here is not available yet. Wait just a few minutes.

B.V.: Oh. Aao. What we gonna do?

S.C.: Can I have half an hour or one hour? It's gonna fail... What he wants, he did not call me. Why he called you and did not call me.

B.V.: Last night, I talked to him. That's why I call you.

S.C.: You are the only one who talked to him. God damn it. What he wants. I have not got any news. I'm waiting. Can you wait and call me back every half hour?

B.V.: OK. Good bye.

S.C.: OK. Good bye.

Conversation No. 5 Between Boonyarit VORAVITHAYA and Sihadej CHINDAWONGSE on 4/30/82 - EXHIBIT R

S.C.: Hello.
B.V.: Hello. It's that you, brother?
S.C.: Yes. I could not reach him yet.
B.V.: What we gonna do?
S.C.: Can you wait till tonight?
B.V.: Oh. Ho.
S.C.: Can I see you on Saturday? Here.
B.V.: What did you say?
S.C.: Can I see you tomorrow? I'll try to check with him tonight. I cannot do it because it's against his order. He strictly ordered me to wait until I hear from him. He did not say that he called you. I doubt he'll call me tonight. I have tried to call him since then, but the line was not available at all.
B.V.: What we gonna do? Let's do this. Are you going somewhere in the next half hour? Can I come to see you so we can talk?
S.C.: Why?
B.V.: To talk. If not, I gonna be in trouble.
S.C.: I'm leaving just now. I'll try to call him tonight from home. Can you wait til tomorrow? I won't be able to do anything. I'm sorry. If I got the order from him, it's OK.
B.V.: No. It's wrong, you know?
S.C.: He strictly ordered me to do that.
B.V.: Yeh?
S.C.: Yes. He insisted many times that I must wait for his order. But he also told me to give 6....
B.V.: Let'd do this. You are not going anywhere yet, right? Can I come to see you in 10 minutes? And then we spread, is it good?
S.C.: Huh. But it's not here.
B.V.: It doesn't matter.
S.C.: OK. You give me money first and then tonight I'll check with him. So tomorrow you can come and pick up the thing. Can you see the problem?
B.V.: Yeh.
S.C.: I cannot do it. You have to understand me, Payak? I don't want it failed.
B.V.: Let's do this. I don't want to talk on the phone much.

S.C.: Right.
B.V.: Is the passport there?
S.C.: It's here....come up here to 1834.
B.V.: See you up there?
S.C.: Yes.
B.V.: Is anybody there?
S.C.: No. 1834 OK?
B.V.: You wait there. Don't go anywhere.
S.C.: OK.
B.V.: OK. Good bye.

Conversation No. 6 Between Boonyarit VORAVITHAYA and Viroj CHITMONGKOLLER on 4/30/82 - EXHIBIT R

Man: Hello
B.V.: Hello
Man: Hello, who is speaking?
B.V.: Can I speak to Ang?
Man: Who is speaking?
B.V.: Boon.
Man: Wait a moment.
B.V.: Yes.
V.C.: Hello
B.V.: Hello. Hi. You just woke up?
V.C.: Yes.
B.V.: What's up?
V.C.: Let's do like I told you last night.
B.V.: I called you yesterday but I could not get through. I don't know why?
V.C.: Not to see who?
B.V.: I could not get through...to this house...
V.C.: Yesterday?
B.V.: Yes.
V.C.: Maybe the line was broken.
B.V.: Did he leave yet?
V.C.: Ha?
B.V.: Did he leave yet?
V.C.: Huh. Saturday....Let's check back again.
B.V.: Now?
V.C.: He said Saturday
B.V.: It's now Friday night.
V.C.: Saturday morning

B.V.: OK. OK.
V.C.: How are you?
B.V.: I'm fine. I want to come back. I'm coming back.
V.C.: Yeh.
B.V.: I'm coming back after I finished this.
V.C.: Let's do as we agreed.
B.V.: OK. OK. Do you have something?
V.C.: Come back immediately after you finished.
B.V.: Give him all?
V.C.: Yes. Give him 2 dozens.
B.V.: OK
V.C.: 2 dozens. Don't forget it.
B.V.: OK
V.C.: He'll call and then you go to Ratburi, OK?
B.V.: Yes, Good bye
V.C.: OK.

Supreme Court, U.S.
FILED
DEC 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-735

In the Supreme Court of the United States

OCTOBER TERM, 1985

BORIPAT SIRIPAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the admission of the statements of co-conspirators violated the Sixth Amendment Confrontation Clause.

2. Whether these statements were properly admitted into evidence under Fed. R. Evid. 801(d)(2)(E).

3. Whether the evidence was sufficient to support petitioner's conviction.

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Constitution, statute and rule:

U.S. Const. Amend. VI (Confrontation Clause) 5, 6, 7, 8, 9
21 U.S.C. 846 ..... 1, 2
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-13) is reported at 771 F.2d 840.

JURISDICTION

The judgment of the court of appeals was entered on August 28, 1985. The petition for a writ of certiorari was filed on October 28, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted on one count of conspiring to distribute and to possess with intent to distribute heroin, in violation of 21 U.S.C. 846. Petitioner was sentenced to a term

of 15 years' imprisonment and fined $15,000. The court of appeals affirmed (Pet. App. 1-13).

1. The evidence at trial showed that petitioner and a number of co-conspirators were involved in a scheme in which heroin was transported from Thailand into the United States by means of a diplomatic pouch and then distributed. In March and April of 1982, Paul Primiano agreed to purchase a substantial quantity of heroin from Alexander Steubing, an American citizen, and Boonyarit Voravithaya, a Thai national traveling in the United States. Steubing and Voravithaya drove to Chicago, where Voravithaya obtained one and one-half pounds of heroin from Sihadej Chindawongse,[1] who was then serving as the Vice Consul of the Royal Consulate of Thailand in Chicago. On April 9, 1982, Steubing and Voravithaya were arrested in Baltimore, and a search of their luggage revealed a pound of 91% pure heroin and $54,670 in cash. Pet. App. 2.

Upon his arrest, Voravithaya gave a complete and full confession, and agreed to plead guilty to conspiracy to distribute heroin, in violation of 21 U.S.C. 846, and to cooperate as an undercover agent. In his undercover capacity, Voravithaya made a number of monitored, tape-recorded phone calls to Viroj Chitmongkollert (a/k/a Ang) and Pirom Chongcharoen (a/k/a Dang), his heroin suppliers and superiors in Thailand. He also made calls to Chindawongse in Chicago and to Primiano in New Jersey. Chitmongkollert and Chongcharoen told Voravithaya that he was to pay their messenger in New York City the $60,000 that he owed them, and that after the payment was made, he would be able to receive three pounds of heroin from Chindowongse in Chicago. This messenger was petitioner. Pet. App. 3.

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[1] Chindawongse was tried jointly with petitioner.

Pursuant to his instructions, Voravithaya telephoned petitioner on April 15, 1982, at Room 902 in the Sheraton City Squire Hotel in New York City and arranged to meet petitioner the following day. Hotel records indicate that, during his stay, petitioner telephoned the numbers in Thailand used by Chitmongkollert and Chongcharoen. Pet. App. 3.

On April 16, 1982, while under DEA surveillance, Voravithaya, carrying the $60,000 in cash, met with petitioner in the Sheraton. The two greeted each other in the lobby, had a drink at the hotel bar, and entered an elevator together. The elevator proceeded directly to the ninth floor. Shortly thereafter, Voravithaya returned to the lobby without petitioner or the cash. Pet. App. 3.

Voravithaya then proceeded to Chicago with DEA agents to receive the heroin made available as a result of the exchange with petitioner. On April 20, 1982, he received two pounds of 98% pure heroin from Chindawongse. The next day, after he placed another call to Chitmongkollert in Thailand, Voravithaya received another pound of heroin. Pet. App. 3.

On April 27, 1982, at Chicago's O'Hare Airport, Chindawongse picked up a diplomatic pouch addressed to the Royal Consulate of Thailand. Later that day, after taking the pouch back to the Thai consulate, Chindawongse was observed holding a distinctive bag outside the consulate's office. Three days later, Chindawongse was arrested in Chicago. A search of his house yielded four and a half pounds of 98% pure heroin, located in the distinctive bag observed on April 27. Pet. App. 3-4.

Meanwhile, on April 29, 1982, Chitmongkollert instructed Voravithaya to meet again with petitioner and to pay him $240,000, for which Voravithaya would receive four and one-half pounds of heroin from

Chindawongse in Chicago. Chitmongkollert gave Voravithaya a phone number in California at which to contact petitioner. On May 2, 1982, DEA agents surveilled the address for which this phone number was listed and arrested petitioner walking out of that house. At the time of the arrest, a search of the house uncovered an address book containing the phone numbers in Thailand of Chitmongkollert and Chongcharoen; used plane tickets confirming petitioner's presence in New York on the day that Chitmongkollert had instructed Voravithaya that the messenger would be dispatched to receive the $60,000; another used plane ticket confirming petitioner's travel from Thailand to California on April 30, 1982, the day Chitmongkollert had advised Voravithaya that the messenger would arrive in California; and a message in Thai, which translated as "friend from Muangthong Housing Estate has gone to inquire about the [stuff, article, or thing] intrusted from Huahin."[2] One week later, Voravithaya died from an apparent suicide. Pet. App. 4.

2. At trial, the consensually monitored phone conversations between Voravithaya and various coconpirators, including petitioner, Chindawongse, Chitmongkollert, and Chongcharoen, were introduced into evidence. None of the parties to the conversations was available to testify—Chindawongse, because of the exercise of his Fifth Amendment right not to testify; Chitmongkollert and Chongcharoen, because they were in Thailand; and Voravithaya, because he was dead. Pet. App. 8 n.6. The conversations were admitted under Fed. R. Evid. 801(d)(2)(E) as co-

[2] This message, consistent with other coded writings in the conspiracy, used geographic locations in Thailand to identify members of the conspiracy, and instructed petitioner to receive a package from one individual in trust for another (Pet. App. 4 n.2).

conspirator statements made during the course of and in furtherance of a conspiracy. The government produced the requisite independent evidence of petitioner's participation in the conspiracy, and the trial court made an implicit finding of the existence of a conspiracy and petitioner's participation in it.

The court of appeals affirmed the conviction, finding that there was ample independent evidence of the existence of the conspiracy and of petitioner's participation in it to justify the admission of the tapes (Pet. App. 5-7). The court further held that since the tapes had been properly admitted under Fed. R. Evid. 801(d)(2)(E), their admission did not violate the Confrontation Clause (Pet. App. 7-10).

ARGUMENT

1. Petitioner contends (Pet. 7-10) that admission of the tapes under the co-conspirator exception to the hearsay rule, Fed. R. Evid. 801(d)(2)(E), violated the Confrontation Clause as construed in *Ohio* v. *Roberts*, 448 U.S. 56 (1980). This argument lacks merit.

In *Ohio* v. *Roberts*, the Court rejected a Confrontation Clause challenge to the admission of testimony given at a preliminary hearing. The Court stated (448 U.S. at 65) that "[t]he Confrontation Clause operates in two separate ways to restrict the range of admissible hearsay." First, the Court stated (*ibid.*), the prosecution must sometimes demonstrate that the declarant is unavailable as a witness, and second (*id.* at 65-66), the evidence must be reliable. The Court added that "[r]eliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception." *Id.* at 66.

Here, petitioner concedes (see Pet. 7) that all of the co-conspirator/declarants were unavailable to

testify at trial.[3] Moreover, the statements in question were sufficiently reliable to satisfy the Confrontation Clause. The statements fell within the co-conspirator rule, a "firmly rooted" exception to the hearsay rule that grew up 200 years ago. See U.S. Br. at 19-21 in *United States* v. *Inadi*, No. 84-1580. Accordingly, the reliability of these statements can be "inferred without more." *Ohio* v. *Roberts*, 448 U.S. at 66. See also, *e.g.*, Pet. App. 8-10; *United States* v. *Lurz*, 666 F.2d 69, 80-81 (4th Cir. 1981), cert. denied, 455 U.S. 1005 (1982) and 457 U.S. 1136 (1982); *United States* v. *Kendall*, 665 F.2d 126, 133 (7th Cir. 1981), cert. denied, 455 U.S. 1021 (1982); *United States* v. *Peacock*, 654 F.2d 339 (5th Cir. 1981), cert. denied, 464 U.S. 965 (1983); *United States* v. *Burroughs*, 650 F.2d 595 (5th Cir.), cert. denied, 454 U.S. 1037 (1981); *United States* v. *Papia*, 560 F.2d 827, 835 (7th Cir. 1977); *Ottomano* v. *United States*, 468 F.2d 269, 273 (1st Cir. 1972), cert. denied, 409 U.S. 1128 (1973). Neither *Roberts* nor any other decision of this Court conditions the admission of co-conspirator statements upon a showing that the statements are reliable for reasons in addition to the fact that they fall within Fed. R. Evid. 801(d)(2)(E).

It is true, as petitioner notes (Pet. 11-14), that some courts of appeals have required a separate, individualized inquiry into whether co-conspirator statements are sufficiently reliable for Confrontation Clause purposes. See, *e.g.*, *United States* v. *Ordonez*, 737 F.2d 793, 802-804 (9th Cir. 1984); *United States*

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[3] For this reason, there is no need to hold this petition pending the decision in *United States* v. *Inadi*, No. 84-1580 (argued Dec. 3, 1985), which concerns the question whether the government may introduce co-conspirator statements without producing the declarant or showing that he is unavailable.

v. *Ammar*, 714 F.2d 238, 254-257 (3d Cir.), cert. denied, 464 U.S. 936 (1983); *United States* v. *Wright*, 588 F.2d 31, 37-38 (2d Cir. 1978), cert. denied, 440 U.S. 917 (1979); *United States* v. *Kelley*, 526 F.2d 615, 620-621 (8th Cir. 1975), cert. denied, 424 U.S. 971 (1976). The statements at issue here clearly pass this test as well.

Even those courts that do not regard co-conspirator statements as automatically reliable for Confrontation Clause purposes, acknowledge that "'[i]n most cases the determination that a declaration is in furtherance of the conspiracy * * * will decide whether sufficient indicia of reliability were present. While there may be exceptions, we do not think that they will be frequent.'" *United States* v. *Wright*, 588 F.2d at 38, quoting *United States* v. *Puco*, 476 F.2d 1099, 1107-1108 (2d Cir.), cert. denied, 414 U.S. 844 (1973); *United States* v. *Ammar*, 714 F.2d at 256; *United States* v. *Nelson*, 603 F.2d 42, 46 (8th Cir. 1979). In assessing reliability, these courts generally examine four factors derived from *Dutton* v. *Evans*, 400 U.S. 74, 88-89 (1970) (plurality opinion). They are (*United States* v. *Ammar*, 714 F.2d at 256, quoting *United States* v. *Perez*, 658 F.2d 654, 661 (9th Cir. 1981)):

> (1) Whether the declaration contained assertions of past fact; (2) whether the declarant had personal knowledge of the identity and role of the participants in the crime; (3) whether it was possible that the declarant was relying upon faulty recollection; and (4) whether the circumstances under which the statements were made provided reason to believe that the declarant had misrepresented the defendant's involvement in the crime.

The statements in the instant case were clearly reliable under this analysis. In particular, the conversa-

tions relating to petitioner concerned ongoing and future transactions, specifically the arrangements for the payments of cash for heroin. In view of the fact that petitioner was Chitmongkollert's messenger, Chitmongkollert as declarant clearly had knowledge of petitioner's identity and role in the activities. There is no reason to believe that Chitmongkollert was relying on faulty recollection; he was simply describing the current arrangement for the exchange. Moreover, the only factor challenged by petitioner is whether any reason existed for Chitmongkollert to misrepresent petitioner's role in the conspiracy. Surely, however, every incentive existed to speak accurately, since Chitmongkollert was giving instructions for the exchange of the money and describing his messenger who was to receive this money. In these circumstances, it is evident that, even if they must be tested individually, the statements were sufficiently trustworthy to be admitted under the Confrontation Clause.[4]

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[4] The Sixth Amendment right of confrontation applies with respect to the "witnesses against" the defendant. *Roberts* and *Dutton* appear to assume, without actual analysis of the issue, that any nontestifying hearsay declarant is a "witness" within the meaning of the Confrontation Clause. In our view, however, this is an issue that requires closer scrutiny than it has heretofore received. Such scrutiny would, we believe, demonstrate that the term "witness" should not be defined so broadly that it includes every maker of an entry in a business record, every patient who describes his ailment to a physician, or every agent who makes a statement designed to further a business venture. Rather, it should include persons who actually give testimony in court and, in addition, only those extra-judicial declarants whose statements are testimonial in character—*i.e.*, made or obtained for use in a judicial or administrative proceeding. While the precise dimensions of the definition of witness require some further delineation, it would seem quite clear that a co-conspirator who

2. Petitioner also contends (Pet. 15-17) that the necessary predicates under Fed. R. Evid. 801(d)(2)(E) for admission of the tapes were not met. He contends that there was no independent evidence that either he or the parties to the conversations were members of the conspiracy.

The court of appeals correctly found that there was sufficient independent evidence of petitioner's role in the conspiracy (Pet. App. 5-7), and that factual conclusion does not warrant this Court's review. The government established that on April 16, 1982, petitioner met with Voravithaya in the lobby of the Sheraton City Squire Hotel in New York. They had a drink together in the hotel bar and then rode the elevator to the ninth floor. Petitioner had a room on the ninth floor, room 902. Voravithaya was carrying $60,000 when he entered the elevator. He did not have the money when he returned to the hotel lobby several minutes later. In addition, telephone records at the hotel and at the house where petitioner lived in California reflected calls to the numbers in Thailand used by Chitmongkollert and Chongchareon, the drug suppliers for the conspiracy. A search of petitioner's house also uncovered (1) used airplane tickets confirming petitioner's presence in New York at the time of Voravithaya's $60,000 payoff, (2) a used airplane ticket indicating petitioner's travel from Thailand to California on the very day Chitmongkollert had advised Voravithaya that the messenger would arrive in California, and (3) a coded

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speaks during the course of a conspiracy for the purpose of furthering its objectives is not being a "witness."

For the reasons given in text, however, petitioner's Confrontation Clause claim must be rejected even if co-conspirator declarants are considered to be "witnesses" whose "evidence" is regulated by the Clause.

Thai message meaning that petitioner was to receive a package from one individual in trust for another. As the court of appeals found (Pet. App. 6-7), these pieces of evidence, taken together with all the inferences that logically may be drawn therefrom, reasonably support a conclusion that petitioner was a participant in the conspiracy.

In addition, the non-hearsay sections of the tapes themselves may be used to establish the requisite independent evidence. The instructions and other non-assertive statements on the tapes are not hearsay and need not even meet the co-conspirator exception to be admissible. See *United States* v. *Shepherd*, 739 F.2d 510, 514 (10th Cir. 1984); *United States* v. *Keane*, 522 F.2d 534, 558 (7th Cir. 1975), cert. denied, 424 U.S. 976 (1976). These in turn provide circumstantial evidence that petitioner was a co-conspirator. See *United States* v. *Helmel*, 769 F.2d 1306, 1313-1314 (8th Cir. 1985).

This same principle establishes Chitmongkollert's participation as a member of the conspiracy. The fact that the statements were made is circumstantial evidence of Chitmongkollert's knowledge and of the fact that he was a co-conspirator. When considered for this purpose, *i.e.*, for the fact that the statements were made, the statements are not considered for their truth, but as verbal acts to show involvement, and thus are not hearsay. See *United States* v. *Helmel*, 769 F.2d at 1313-1314; *United States* v. *Shepherd*, 739 F.2d at 514; *United States* v. *Brooklier*, 685 F.2d 1208, 1219 (9th Cir. 1982), cert. denied, 459 U.S. 1206 (1983). In addition, the statements by Chitmongkollert may also be used to establish his knowledge without constituting hearsay. Thus the conversations, together with the existence of Chitmongkollert's name and telephone number in

petitioner's address book, are clearly sufficient to establish, by a preponderance of the evidence, that Chitmongkollert was a member of the conspiracy.

As to Voravithaya's statements in the tapes, while he was not then a conspirator, the vast majority of his remarks were insignificant and nonassertive comments such as questions and agreement to instructions. While the statements were useful to allow the tapes to be comprehensible, Voravithaya's statements by themselves had very little implicating value. The few statements that might qualify as assertions were adopted by Chitmongkollert, as is made clear by the context of the conversation. See, *e.g.*, Pet. App. 102. Statements made by an informant and subsequently adopted by a co-conspirator are specifically admissible under Rule 801(d)(2)(E). See *United States* v. *Ammar*, 714 F.2d at 251-253. In any event, Voravithaya did not have any independent information implicating petitioner in the conspiracy, and therefore such declarations as implicated petitioner could only have been those of Chitmongkollert, who was a co-conspirator.

3. Petitioner's final contention (Pet. 18-21) is that the evidence against him is insufficient for conviction. This fact-bound question is not worthy of further review by this Court. As the court of appeals correctly observed (Pet. App. 10-11), the facts that provide independent evidence of petitioner's participation in the conspiracy, taken together with the taped conversations, clearly establish petitioner's role in the conspiracy, as well as his knowledge.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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